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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Samhita Gera, derivatively on behalf of
Opendoor Technologies Inc. (f/k/a Social
Capital Hedospohia Holdings Corp. II),

Plaintiff,

vs.

Chamath Palihapitiya, Steven Trieu, Ian
Osborne, David Spillane, Adam Bain, Eric
Wu, Carrie Wheeler, Cipora Herman, Pueo
Keffer, Glen Solomon, Jason Kilar, Jonathan
Jaffe, John Rice, and SCH Sponsor II LLC,

Defendants,

and

Opendoor Technologies Inc. (f/k/a Social
Capital Hedospohia Holdings Corp. II),

Nominal Defendant.

Case No.:

**Verified Shareholder Derivative
Complaint**

Jury Trial Demanded

1 Plaintiff Samhita Gera (“Plaintiff”), by Plaintiff’s undersigned attorneys,
2 derivatively and on behalf of Nominal Defendant Opendoor Technologies Inc., f/k/a
3 Social Capital Hedosophia Holdings Corp. II (“Opendoor” or the “Company”),¹ files this
4 Verified Shareholder Derivative Complaint against Defendants Chamath Palihapitiya
5 (“Palihapitiya”), Steven Trieu (“Trieu”), Ian Osborne (“Osborne”), David Spillane
6 (“Spillane”), Adam Bain (“Bain”), Eric Wu (“Wu”), Carrie Wheeler (“Wheeler”), Cipora
7 Herman (“Herman”), Pueo Keffer (“Keffer”), Glenn Solomon (“Solomon”), Jason Kilar
8 (“Kilar”), Jonathan Jaffe (“Jaffe”), John Rice (“Rice”) (together, the “Individual
9 Defendants”), and SCH Sponsor II LLC (the “Sponsor”) (collectively with Opendoor and
10 the Individual Defendants, “Defendants”) for violations of Section 14(a) of the Securities
11 Exchange Act of 1934 (the “Exchange Act”). As for Plaintiff’s complaint against the
12 Individual Defendants, Plaintiff alleges the following based upon personal knowledge as
13 to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters,
14 based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys,
15 which included, among other things, a review of the Defendants’ public documents,
16 conference calls and announcements made by the Defendants, United States Securities
17 and Exchange Commission (“SEC”) filings, wire and press releases published by and
18 regarding the Company, legal filings, news reports, securities analysts’ reports and
19 advisories about the Company, and information readily obtainable on the Internet.
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26 ¹ “Opendoor” refers to the Company after the December 2020 Merger (defined below)
27 and name change, whereas “SCH” refers to the Company prior to the Merger and name
28 change. “Legacy Opendoor” refers to Opendoor Labs Inc., the private company before the
Merger.

1 Plaintiff believes that substantial evidentiary support will exist for the allegations set forth
2 herein after a reasonable opportunity for discovery.

3 **NATURE OF THE ACTION**

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5 1. This is a shareholder derivative action that seeks to remedy wrongdoing
6 committed by the Company's current and former directors and officers from November
7 30, 2020 through November 3, 2022, both dates inclusive (the "Relevant Period").

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9 2. Opendoor is a residential iBuyer real estate transaction company that
10 purports to operate an e-commerce platform that leverages software, data science,
11 product design, and operations with the aim of providing a streamlined, on-demand, and
12 mobile process of buying and selling homes to its customers. iBuyers are companies that
13 utilize automated valuation model ("AVM") algorithms to estimate home prices, buy
14 homes directly from the home's seller, and then flip the home quickly for a profit,
15 sometimes within twenty-four hours.² According to Opendoor, individuals looking to sell
16 their homes can use the Company's mobile app or website and receive an immediate,
17 "market-based" cash offer for their home. Once an offer is made, Opendoor identifies
18 "necessary" repairs and subtracts the cost of the repairs from the cash offer. Opendoor
19 claims that the repair evaluation process is used to "make sure the house is safe and
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24 ² The "i" stands for "instant." iBuyers include companies such as Zillow and Redfin.
25 According to *The New York Times*, iBuyers "offer 0.22 percent less than fair-market value
26 for a home and charge the seller slightly higher fees, about 1.3 percent more than a
27 conventional listing agent would. The trade-off is a faster transaction — the process takes
28 days rather than weeks, as there are no extended escrow periods — and fewer of the
hurdles that give sellers headaches, like open houses and multiple showings with
strangers." See "Is iBuying Here to Stay?" *The New York Times*, Nov. 19, 2021,
<https://www.nytimes.com/2021/11/19/realestate/ibuying-ilending.html>

1 functional,” not to “uncover every deficiency in your home to lower the offer.” Opendoor
2 further claims that home sellers even save money under the Company’s repair program
3 since “we do our best to pass wholesale savings on to you from our partnerships with
4 local vendors.” On top of repairs costs, Opendoor collects a 5% service charge fee for
5 selling each home.
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7 3. Opendoor previously operated as a special purpose acquisition company
8 (“SPAC”), a publicly traded corporation with a two-year life span formed with the sole
9 purpose of effecting a merger, or “combination,” with a privately held business to enable
10 it to go public. The Company is the result of a business combination that closed on
11 December 21, 2020 (the “Merger”) with Opendoor Labs Inc. (“Legacy Opendoor”), a
12 private company founded in 2014 by Defendant Wu that purportedly sought to “reinvent
13 one of life’s most important transactions with a new, radically simple way to buy and sell
14 a home.” Prior to the Merger, the Company was named Social Capital Hedosophia
15 Holdings Corp. II (“SCH”). Unbeknownst to the shareholders who approved the Merger,
16 (i.e., SCH’s shareholders), the value of the Merger was not in line with Defendants’
17 representations. In fact, through the Merger, SCH inherited a business that was a far cry
18 from revolutionizing the residential real estate market and offered little in the way of
19 financial growth or success. By making false and misleading statements regarding the
20 capabilities of Legacy Opendoor’s pricing algorithm and SCH’s due diligence of Legacy
21 Opendoor prior to the Merger, Defendants successfully deceived the investing public into
22 approving the Merger, and with it, lucrative arrangements that materially benefitted
23 insiders at SCH and Legacy Opendoor to the Company’s detriment. The full truth
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1 remained hidden from investors until years after the Merger closed and the value of the
2 Company's securities tanked to new lows.

3 4. SCH was incorporated in the Cayman Islands on October 18, 2019. SCH's
4 most significant investor was the Sponsor, which was managed and controlled by
5 Defendants Palihapitiya and Osborne. Several of the Individual Defendants were direct
6 or indirect members of the Sponsor.
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8 5. Initially, as noted in its draft registration statement filed with the SEC on
9 January 20, 2020, SCH's stated business targets were companies in the technology
10 industries. Indeed, SCH's directors and officers held themselves out to investors as highly
11 experienced in the technology and finance industries, which they repeatedly stated would
12 be SCH's focus for completing a merger.
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15 6. Prior to SCH's initial public offering ("IPO"), the Sponsor purchased an
16 aggregate of 8,625,000 shares of common stock from SCH for an aggregate purchase
17 price of \$25,000 in cash, or approximately \$0.003 per share (the "Founder Shares"). In
18 March 2020, the Sponsor transferred 100,000 of the Founder Shares to each of Defendant
19 Spillane and Defendant Herman, who served as two of SCH's independent directors.
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21 7. On April 27, 2020, SCH effected a pro rata share capitalization which
22 increased the number of outstanding Founder Shares from 8,625,000 to 10,350,000,
23 thereby ensuring that the Sponsor would retain approximately 20% of the total issued and
24 outstanding shares of SCH upon the consummation of SCH's IPO. Through the issuance
25 of the Founder Shares, the Sponsor, and by their joint control of the Sponsor, Defendants
26 Palihapitiya and Osborne, collectively owned approximately 20% of SCH's issued and
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1 outstanding shares of common stock as of the date of the Merger Proxy Statement
2 (defined below). The Merger Proxy Statement reported that each of Defendants
3 Palihapitiya and Osborne may be deemed the beneficial owner of the Founder Shares
4 held by the Sponsor.
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6 8. On April 30, 2020, SCH closed its IPO, selling 41,400,000 units at \$10.00
7 per unit and generating gross proceeds of \$414,000,000. In addition, SCH issued units to
8 the Sponsor in a private placement that occurred simultaneously with the closing of the
9 IPO. Specifically, the Sponsor purchased an aggregate of 6,133,333 private placement
10 warrants at a price of \$1.50 per private placement warrant, for a purchase price of
11 \$9,200,000 (the “Private Placement Warrants”).
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13 9. Following the closing of SCH’s IPO, \$414,000,000 of the net proceeds
14 generated from the IPO and simultaneous private placement were placed in a trust
15 account (the “Trust”), and these funds were to be released only upon the closing of a
16 qualifying business combination, or in the case of liquidation to return the funds to SCH’s
17 investors. The Trust was established to safeguard two key rights held by SCH
18 shareholders under SCH’s Amended and Restated Memorandum and Certificate of
19 Association (the “Certificate of Incorporation”): (1) the right to redeem their shares at
20 \$10.00 per share price instead of investing in the business combination; and (2) in the
21 event SCH was unable to timely complete the business combination, the right to receive
22 a return of all IPO proceeds.
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24 10. However, as certain of the Individual Defendants had either a direct or
25 indirect economic interest in the Founder Shares and Private Placement Warrants, their
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1 financial interests were misaligned with those of SCH shareholders. These conflicts of
2 interest only worsened once SCH determined it would complete a business combination
3 with Legacy Opendoor. Pursuant to SCH's Certificate of Incorporation, SCH had only
4 24 months from the date of the IPO's closing, or until April 30, 2022, to complete a
5 business combination. This meant that, in the event SCH failed to complete a business
6 combination by that time, SCH would have had to: (1) cease all its operations, except
7 those made for the purposes of winding up the Company's affairs and liquidating; (2)
8 redeem public shares; and (3) dissolve and liquidate the funds held in the Trust to return
9 to SCH's investors. Because each of SCH's officers and directors agreed to waive their
10 rights to liquidating distributions from the Trust, the \$414 million in Founder Shares and
11 Private Placement Warrants would have been rendered worthless to them in the event
12 SCH failed to timely complete a business combination.

16 11. Driven by their strong motivations to avoid liquidation of the Trust and
17 cash out on their investments, the Individual Defendants affiliated with SCH were highly
18 motivated to facilitate a business combination with just about any company. Despite
19 repeatedly representing to investors prior to and after its IPO that it planned to merge
20 with a healthy, qualified company specializing in the technology industry, by mid-May
21 2020, Defendant Bain had begun engaging Defendant Wu for purposes of effectuating a
22 Merger with Legacy Opendoor, a company plagued by issues arising from, among other
23 things, a faulty housing market pricing algorithm.

26 12. Between the end of May 2020 and August 7, 2020, SCH and its advisors
27 repeatedly represented to investors that they had conducted substantial due diligence of
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1 Legacy Opendoor in anticipation of the proposed merger. In reality, SCH's due diligence
2 of Legacy Opendoor was glaringly inadequate, as it unreasonably failed to: (1) investigate
3 and confirm Legacy Opendoor's claims about having a "highly responsive" real estate
4 artificial intelligence-powered algorithm; or (2) investigate the consumer fraud concerns
5 surrounding Legacy Opendoor's questionable repair invoices.
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7 13. This information was highly material to investors. The Company's plan to
8 provide best-in-the-industry residential real estate value forecasts hinges on its purported
9 proprietary technology—an artificial intelligence ("AI") powered algorithm—which
10 Legacy Opendoor claimed was "highly responsive" and was impervious to changing
11 macroeconomic housing market conditions. Indeed, during the Relevant Period,
12 Defendant Wheeler emphasized how important pricing is to Opendoor's business, noting
13 that "pricing is absolutely core to what we do. It is something that Opendoor[] has been
14 investing in religiously from day one as a core capability in eight years of investment and
15 that's not going to abate." Unbeknownst to the investing public, however, Legacy
16 Opendoor's AI algorithm was not autonomous, but instead required human input and was
17 therefore susceptible to human miscalculation of the housing market, just as any other
18 iBuyer competitor such as Zillow was. In addition to the lackluster AI-powered
19 algorithm, Legacy Opendoor was also plagued by a series of consumer fraud concerns
20 involving its business practices, particularly Legacy Opendoor's practice of overcharging
21 customers via artificially inflated repair invoices. Indeed, the Federal Trade Commission
22 ("FTC") began investigating Legacy Opendoor in 2019, and soon thereafter determined
23 that Legacy Opendoor "frequently demanded cosmetic changes such as repainting and
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1 replacement of items that could be repaired at far lower cost” and “[i]f the repairs cost
2 less than the amount deducted, Opendoor retains the excess as profit.” These concerns
3 were significant to the investing public, as the Company’s AI-powered algorithm and,
4 relatedly, basic business model were essential to performing its operations.
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6 14. On September 15, 2020, SCH issued a press release announcing that it had
7 entered into an Agreement and Plan of Merger with Legacy Opendoor and Hestia Merger
8 Sub Inc. (“Merger Sub”) (the “Merger Agreement”). Pursuant to the terms of the Merger
9 Agreement, upon consummation of the Merger, Merger Sub would merge with and into
10 Legacy Opendoor, the separate corporate existence of Merger Sub would cease, and
11 Legacy Opendoor would become the surviving corporation and a wholly owned
12 subsidiary of SCH. SCH would then immediately be renamed Opendoor Technologies
13 Inc.
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15 15. On November 30, 2020, SCH filed a proxy statement with the SEC (the
16 “Merger Proxy Statement”). The Merger Proxy Statement was solicited by the Board of
17 Directors of SCH, including Defendants Bain, Herman, Palihapitiya, Osborne, and
18 Spillane, who purportedly approved the Merger Agreement “after careful consideration”
19 and recommended that SCH shareholders approve the Merger, the 2020 Incentive Award
20 Plan (the “Incentive Plan”), and the election of seven directors (including Defendants
21 Wu, Bain, Herman, Keffer, Solomon, Kilar, and Jaffe) to the post-Merger Company’s
22 Board. The Merger Proxy Statement represented to investors that the aggregate value of
23 the consideration to be paid by SCH in the Merger was approximately \$5 billion through
24 the issuance of approximately 560,005,000 shares of “New Opendoor” common stock
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1 issued by SCH, calculated as follows: (i) 500,000,000 shares of Opendoor common stock
2 priced at \$10.00 per share to existing Legacy Opendoor shareholders; (ii) 3,980,000
3 shares to Defendants Wu and Wheeler as consideration for their public equity (“PIPE”)
4 financing (“Opendoor PIPE Investors”); (iii) 41,400,000 shares of Opendoor common
5 stock priced at \$10.00 per share to SCH’s shareholders; (iv) 26,375,000 shares of
6 Opendoor common stock priced at \$10.00 per share to the Sponsor; and (v) 40,000,000
7 shares of Opendoor common stock priced at \$10.00 per share to the third party PIPE
8 investors. As a result, Legacy Opendoor shareholders received significant shares in the
9 post-Merger Company from the Company that were more valuable than what Legacy
10 Opendoor was worth, thereby damaging the Company.³

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14 16. The Merger Proxy Statement included a series of false and misleading
15 statements which touted the value represented by the Merger and Legacy Opendoor. In
16 particular, the Merger Proxy Statement contained materially false and misleading
17 statements and omissions that failed to disclose, *inter alia*: (i) the Company
18 misrepresented to its pre-Merger investors the nature and capabilities of Legacy
19 Opendoor’s AI-powered algorithm to accurately estimate home prices; and (ii) Legacy
20 Opendoor utilized a practice of overcharging customers via artificially inflated repair
21 invoices, and therefore continuously overstated the effectiveness of its strategies and
22 capability to grow and maintain a profitable contribution margin, a key metric in the real
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28 ³ Shareholders that did not redeem at \$10 per share before the Merger closed became
holders of Opendoor common stock and were damaged thereby.

1 estate industry.⁴ As a result of the material misrepresentations and omissions made by the
2 Individual Defendants in the Merger Proxy Statement and statements leading up to the
3 close of the Merger, shareholders were unaware of material undisclosed risks and were
4 deceived into approving the unfavorable Merger for which the Company overpaid for
5 Legacy Opendoor instead of redeeming their initial investments, which were valued
6 greater than any interest they later obtained in the Company, given the true value of
7 Legacy Opendoor (collectively, the “Overpayment Misconduct”).
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10 17. On December 17, 2020, the Merger closed. By the close of trading on
11 December 21, 2020, the first day the Company’s shares began trading on NASDAQ, the
12 Company’s share price was \$31.25 per share. The matters misrepresented in the Merger
13 Proxy Statement directly impacted the Company’s ability to successfully operate and its
14 capability of achieving consistent and robust contribution margins, both of which are
15 integral to the Company’s actual worth, and in result, the post-Merger Company’s stock.
16 Indeed, the Merger Proxy Statement represented to SCH shareholders that Legacy
17 Opendoor was a serious housing market disrupter that was impervious to market
18 fluctuations because it possessed a sophisticated and highly adaptive automated pricing
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23 ⁴ Opendoor describes the importance of contribution margin in the Company’s 2020 Form
24 10-K, stating that contribution margin is “an important measure of business performance
25 as it captures the unit level performance isolated to homes sold in a given period and
26 provides comparability across reporting periods. Contribution Profit helps management
27 assess inflows and outflows directly associated with a specific resale cohort.” The 2020
28 Form 10-K also stated that Opendoor’s “long-term financial performance depends, in part,
on continuing to expand unit margins through” initiatives such as “[p]ricing engine
optimization and enhancements” and “[l]owering platform costs through refinement,
greater automation and self-service”

1 algorithm that outpaced competitors and positioned the Company to consistently increase
2 its contribution margin, a key metric in the real estate industry that signals success in
3 accurately pricing and selling homes for profit. Throughout the Relevant Period, the
4 Individual Defendants emphasized to investors that “[t]he ultimate measure you should
5 hold us accountable for is how we’re doing on contribution margin delivery” and that
6 “forecasting accuracy [is] what allows [Opendoor] to . . . deliver margins within that 4%
7 to 6% contribution margin range that we’ve guided to.” The Merger Proxy Statement
8 discussed Legacy Opendoor’s contribution margins at levels between 1.9% to 3.5% and
9 made representations indicating to investors that, based on Legacy Opendoor’s purported
10 industry-disrupting pricing algorithm, this contribution margin percentage would
11 inevitably rise, thereby benefitting the post-Merger Company and its investors. Little did
12 investors know that, during the Relevant Period, Opendoor’s contribution margin would
13 fall into the negatives.

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18 18. As a result of Defendants’ materially false and misleading statements,
19 investors wholeheartedly believed that Opendoor’s AI-powered algorithm set the
20 Company apart from its competitors, including Zillow, who had the second highest
21 revenue among iBuyers in 2021. Indeed, on August 2, 2021, InvestorPlace reported that
22 “[o]ne of the main reasons for Opendoor’s success is its robust pricing algorithm” and
23 further noted that “[Opendoor’s] competitors — Zillow [] and Offerpad — do not possess
24 such pricing engines.” Moreover, based on Defendants’ positive representations, just ten
25 days later, on August 12, 2021, Wedbush added Opendoor to the “Wedbush Best Ideas
26 List” and stated in an analyst report that “*Opendoor’s pricing capabilities have been best*
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1 *in class*, and we believe its vast data is a significant asset.” (Emphasis added.)

2 19. On November 2, 2021, Zillow revealed that it would cease its iBuying
3 business due to Zillow’s algorithm’s inability to accurately predict home prices. That day,
4 Zillow’s CEO issued a public statement revealing that “fundamentally, *[Zillow] ha[s]*
5 *been unable to predict future pricing of homes to a level of accuracy that makes this a*
6 *safe business to be in.*” (Emphasis added.) The market quickly reacted to Zillow’s abrupt
7 withdrawal from the iBuying industry, soon thereafter questioning the capability of AI-
8 created algorithms in general to accurately predict housing market pricing trends. As a
9 result of this widespread skepticism, Opendoor’s stock price fell more than 14.5% on
10 November 2, 2021, from a closing price of \$24.75 per share on November 1, 2021 to
11 close at a price of \$21.12 per share on November 2, 2021.

12 20. A little over a week later, on November 10, 2021, the Company released
13 an earnings report announcing its financial results for the third quarter of 2021. That same
14 day, Opendoor held an earnings call with investors and analysts to discuss the Company’s
15 financial performance for the quarter. During the call, Defendant Wheeler represented to
16 investors that, in contrast to Zillow’s, Opendoor’s algorithm was “highly responsive” to
17 macroeconomic conditions in the housing market. She also told investors that
18 “[i]mportant is that *our model really works in upmarkets, it’s going to work in flat*
19 *markets, it’s going to work in downmarkets.*” (Emphasis added.)

20 21. As a result of these rosy representations, Opendoor’s stock jumped back to
21 life, rising more than 15.5% the following day, from a closing price of \$19.52 per share
22 on November 10, 2021 to close at a price of \$22.56 per share on November 11, 2021.

1 22. As the Company's stock traded at artificially inflated prices, just five days
2 later, beginning on November 16, 2021, Defendant Wu went on a dayslong personal
3 selling spree of his Opendoor stock holdings. Indeed, on November 16, 2021, he sold
4 1,613,498 of his shares of Company common stock, receiving over \$35 million in
5 proceeds. The following day, November 17, 2021, Defendant Wu sold another 628,348
6 shares of Company common stock, receiving more than \$13 million in proceeds.
7 Similarly, on November 18, 2021, Defendant Wu sold another 443,182 shares of
8 Company common stock, enjoying additional proceeds of more than \$9 million. Taken
9 together, in just three days, Defendant Wu sold *more than 2.6 million shares of*
10 *Opendoor stock for personal proceeds of over \$57.6 million*. In total, during the
11 Relevant Period, Defendant Wu made *over \$112 million in proceeds* as a result of selling
12 Company common stock while its price was artificially inflated due to Defendants'
13 misrepresentations.
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15 23. The truth about Opendoor began to emerge on February 24, 2022 when the
16 Company announced that its contribution margin for the fourth quarter of 2021 was just
17 4%, constituting a significant drop from the 12.6% contribution margin Legacy Opendoor
18 had attained in the fourth quarter of 2020.
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20 24. On this news, the Company's share price dropped \$2.54 (or 23%) from a
21 closing price of \$10.98 per share on February 24, 2022 to close at a price of \$8.44 per
22 share on February 25, 2022.
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24 25. Around this time during the first quarter of 2022, interest rates rose and
25 home prices fell nationwide. As a result, investors and analysts became even more
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1 skeptical of the Company's operations, continuing to question Opendoor's purported
2 ability to successfully weather the poor macroeconomic conditions in "any" housing
3 market. Still, Defendants continued to mislead investors about Opendoor's pricing
4 algorithm and the Company's ability to thrive even during a crippling lull in the housing
5 market, with Defendant Wu telling investors during a March 8, 2022 investor conference
6 that the Company's business model and contribution margin could flourish in all market
7 conditions, even during the "worst recession in U.S. history." Defendant Wu made these
8 statements despite knowing that: (1) Opendoor's algorithm was not impervious to
9 fluctuations in the housing market; (2) Opendoor relied on human analysis rather than AI
10 forecasting to price homes on its platform; and (3) Opendoor engaged in fraudulent
11 consumer practices.

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15 26. Indeed, Plaintiffs' counsel in the Securities Class Action (defined below)
16 interviewed six former employees of Opendoor (the "CWs"), who confirmed that, by
17 mid-2022, Opendoor was suffering from abnormally high home inventory due to the
18 Company's algorithm's inability to accurately digest, understand, and predict changes in
19 the overall housing market. As a result, the CWs revealed, Opendoor began to extend
20 credits and other incentives to sellers and pay outside real estate brokers large
21 commissions to aid in the selling of the Company's overflowing home inventory, all of
22 which practices ate into Opendoor's profits. However, Defendants concealed this reality
23 from investors.

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27 27. Several months later, on August 1, 2022, the FTC issued a press release
28 announcing that it had reached a \$62 million settlement with Opendoor pertaining to

1 claims that the Company engaged in deceptive trade practices. In addition to paying out
2 the hefty settlement sum, Opendoor was required to modify its business practices.
3 Moreover, as part of the settlement, the FTC publicly released its complaint against
4 Opendoor (the “FTC Complaint”). The FTC stated in an accompanying blog post that
5 Opendoor claimed the Company’s “cutting-edge technology would save sellers money
6 by providing ‘market value’ offers and reducing transaction costs.” However, through its
7 investigation, the FTC found that “*the vast majority of consumers who sold to Opendoor*
8 *lost thousands compared to what they would have realized in net proceeds from selling*
9 *on the market* because Opendoor’s offers have been below market value on average and
10 its costs have been significantly higher than what consumers typically pay.” (Emphasis
11 added.) Further, the FTC determined that Opendoor employees frequently adjusted home
12 values manually—contrary to the repeated representations made by Defendants
13 throughout the Relevant Period of AI-based pricing adjustments—and engaged in other
14 fraudulent conduct. In particular, the FTC revealed that the Company would often charge
15 consumers for a general list of unnecessary home repairs, such as installing a new air
16 conditioner or painting the rooms of a house, that Opendoor required to be completed
17 before a house could be sold. If the consumer trying to sell their house to Opendoor did
18 not inquire or object to this general list of repairs, Opendoor would often not complete
19 some or all of the repairs and simply pocket the extra money, with the FTC noting that
20 “Opendoor has sent customers a list of required repairs with the cost it would charge
21 consumers if they agree to deduct the costs from their sales proceeds. *The list of repairs*
22 *has been typically well beyond what consumers would be responsible for in a market*
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1 *sale.*” (Emphasis added.) The FTC further determined that many of the repairs were not
2 necessary, stating that “Opendoor has routinely requested upgrades to, or replacement of,
3 functional heating and cooling systems, flooring, and roofs. It has also frequently
4 demanded cosmetic changes such as repainting and replacement of items that could be
5 repaired at far lower cost.” In addition, the FTC found that Opendoor would take up to
6 18 days after the Company initially made an offer on a house to provide the seller with a
7 list of repairs. This meant that the sellers could not timely walk away from deals with
8 Opendoor since, by that point, they had already placed deposits on the new homes.
9 Notably, the FTC discovered that Opendoor’s *own internal communications* called this
10 practice a “*bait-and-switch operation.*” (Emphasis added.)
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14 28. Nevertheless, even after the FTC’s findings came to light, Defendants
15 continued to mislead investors regarding the capabilities of Opendoor’s pricing algorithm
16 and business model and the Company’s overall health and prospects. Indeed, on August
17 4, 2022, Defendant Wheeler again represented to investors that Opendoor’s algorithm
18 functions well in the uncertain housing market, stating that “our systems are doing exactly
19 what they’re designed to do, which is responding very, very quickly, adjusting prices to
20 market . . .”
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23 29. The truth about the Company continued to emerge on September 19, 2022
24 when Bloomberg reported that Opendoor lost money on 42 percent of its transactions in
25 August 2022 (as measured by the prices at which it bought and sold properties). These
26 significant losses unquestionably indicated that Opendoor’s algorithm could not
27 accurately predict pricing trends in the housing market.
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1 30. On this news, the Company's share price dropped \$0.32, from a closing
2 price of \$3.88 per share on September 19, 2022 to close at a price of \$3.56 per share on
3 September 20, 2022. The Company's share price continued to fall the next trading day,
4 dropping another \$0.31, from a closing price of \$3.56 per share on September 20, 2022
5 to close at a price of \$3.25 per share on September 21, 2022.

7 31. On November 3, 2022, the truth fully emerged when Opendoor revealed
8 that the Company's contribution margin had slid into the negatives for the third quarter
9 of 2022, bottoming out at -0.7%, significantly below Opendoor's purported forecast of
10 4% to 6% contribution margin, and even further below Opendoor's reported 7.5%
11 contribution margin from the third quarter of 2021. These poor contribution margin
12 results further revealed that Opendoor's pricing algorithm significantly struggled to
13 interpret a changing housing market and corroborated Bloomberg's September 19, 2022
14 report that Opendoor was suffering from significant losses as a result of overpaying for
15 properties.

16 32. On this news, the Company's share price dropped \$0.32, from a closing
17 price of \$2.34 per share on November 3, 2022 to close at a price of \$2.02 per share on
18 November 4, 2022. The Company's share price continued to fall the next trading day,
19 dropping \$0.29, from a closing price of \$2.02 per share on November 4, 2022 to close at
20 a price of \$1.73 per share on November 7, 2022.

21 33. Less than a month later, effective on December 1, 2022, Defendant Wu
22 resigned as CEO of Opendoor, shifting to a new position as the Company's President of
23 Marketplace. Defendant Wheeler vacated her post of CFO that same day to become
24

1 Opendoor's next CEO.

2 34. During the Relevant Period, the Individual Defendants made and/or caused
3 the Company to make to the investing public a series of materially false and misleading
4 statements regarding the business, operations, and prospects of the Company and Legacy
5 Opendoor. Specifically, the Individual Defendants improperly failed to disclose, *inter*
6 *alia*, that: (1) Legacy Opendoor did not have a fully automated AI-powered algorithm;
7 (2) as a result, Legacy Opendoor relied on human judgment to assess pricing trends and
8 was, therefore, not as reliable or as high-quality of an operation as Defendants
9 represented; (3) due to the foregoing, the post-Merger Company was susceptible to
10 changing market conditions just like its main competitor, Zillow; (4) the Company
11 engaged in the Overpayment Misconduct; (5) Legacy Opendoor (and following the
12 Merger, the Company) engaged in fraudulent business practices including issuing fake
13 repairs to bolster profits; (6) Opendoor's contribution margins were susceptible to falling
14 into the negatives; (7) in light of the foregoing, Opendoor's financial projections were
15 impossible to attain and patently unrealistic; and (8) Defendants were improperly
16 interested in increasing their future compensation by seeking shareholder approval of the
17 Incentive Plan. As a result of the foregoing, the Company's public statements were
18 materially false and misleading at all relevant times.

19 35. The Individual Defendants failed to correct and/or caused the Company to
20 fail to correct these false and misleading statements and omissions of material fact to the
21 investing public.

22 36. The conflicts of interest that precipitated the Overpayment Misconduct,

1 include, but are not limited to, the staggering personal financial gains received by the
2 Individual Defendants as a result of the Merger closing. For instance, Defendant Wu's
3 compensation rose over 1300x as a result the Merger, rising from total compensation
4 amounts of \$275,000 in 2019 from Legacy Opendoor, to total compensation amounts of
5 more than \$370 million in 2022 from Opendoor. Likewise, Defendant Wheeler received
6 more than \$50.2 million in 2020. Additionally, Defendant Bain, Defendant Herman,
7 Defendant Jaffe, Defendant Keffer, Defendant Kilar, and Defendant Solomon each
8 received lucrative compensation of \$282,896, \$636,877, \$263,726, \$274,421, \$274,421,
9 and \$280,077, respectively, after the closing of the Merger. The latter amounts pale in
10 comparison to the windfall Defendants Palihapitiya, Trieu, Osborne, and Spillane
11 (collectively, the "SCH Defendants") received from the Merger through their interests in
12 the Founder Shares. Indeed, the Sponsor purchased the Founder Shares for just \$25,000
13 approximately one year before the Merger, and the Founder Shares after the Merger had
14 a market value in excess of \$100 million. During the Relevant Period, these Founder
15 Shares reached a staggering valuation of \$403 million when Opendoor's common stock
16 was trading at a price of \$39 per share. Critically, if the Merger did not close, the SCH
17 Defendants would have missed out on the substantial windfalls to be received from the
18 Founder Shares and Private Placement Warrants, which would have expired worthless
19 had SCH failed to timely complete a qualifying business combination. Likewise, all of
20 the Defendants who served on Opendoor's Board after the Merger, including Defendants
21 Wu, Wheeler, Bain, Herman, Jaffe, Keffer, Kilar, and Solomon, received large grants of
22 Opendoor restricted stock in the weeks following the Merger. Similarly, the Defendants

1 who served on the SCH board at the time and held Founder Shares collectively received
2 millions of dollars in profits from the closing of the Merger.

3 37. Additionally, the Individual Defendants willfully or recklessly caused the
4 Company to fail to maintain adequate internal controls.

5
6 38. In light of the Individual Defendants' misconduct—which has negatively
7 impacted the value of the Company, caused the Company to be subjected to the
8 Overpayment Misconduct and to pay unjust compensation to Defendants, subjected the
9 Company to costly investigations and settlements, including a \$62 million settlement
10 with the FTC, and subjected the Company to a consolidated federal securities class action
11 lawsuit currently pending in the United States District Court for the District of Arizona
12 (the "Securities Class Action"), which names Legacy Opendoor's co-founder and former
13 CEO, Opendoor's former CFO and current CEO, a majority of Opendoor's current Board
14 of Directors, and SCH's former board of directors as defendants—the Company has
15 expended hundreds of millions of dollars and will have to expend millions more.

16
17 39. In light of the Company's directors' receipt of material benefits due to the
18 approval of the Merger and the Incentive Plan, collective engagement in fraud and
19 misconduct by the Company's directors, of the substantial likelihood of the directors'
20 liability in this derivative action and of the Individual Defendants' liability in the
21 Securities Class Action, and of their not being disinterested and/or independent directors,
22 a majority of the Company's Board of Directors (the "Board") cannot consider a demand
23 to commence litigation against themselves on behalf of the Company with the requisite
24 level of disinterestedness and independence.
25
26
27
28

JURISDICTION AND VENUE

40. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under Section 14(a) of the Exchange Act (15 U.S.C. § 78n(a)(1)) and Rule 14a-9 of the Exchange Act (17 C.F.R. § 240.14a-9).

41. Plaintiff's claims also raise a federal question pertaining to the claims made in the Securities Class Action based on violations of the Exchange Act.

42. This derivative action is not a collusive action to confer jurisdiction on a court of the United States that it would not otherwise have.

43. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1401 because a substantial portion of the transactions and wrongs complained of herein occurred in this District, the Defendants have received substantial compensation in this District by engaging in numerous activities that had an effect in this District, and Opendoor is headquartered in this District.

PARTIES

Plaintiff

44. Plaintiff is a current shareholder of Opendoor common stock. Plaintiff has continuously held Opendoor common stock since purchasing it on June 18, 2020.

Nominal Defendant Opendoor

45. Nominal Defendant Opendoor is a Delaware corporation with principal executive offices located at 410 N. Scottsdale Road, Suite 1600, Tempe, AZ 85281.

46. The Company's shares trade on NASDAQ under the ticker symbol "OPEN."

1 **The Sponsor**

2 47. The Sponsor, SCH Sponsor II LLC, a Cayman Islands limited liability
3 company, served as the sponsor of SCH leading up to the Merger and is affiliated with
4 several of the Individual Defendants. The Sponsor and its affiliates collectively owned
5 over 19% of the Company's common stock and were conflicted in the Merger given their
6 investments in SCH would have been rendered worthless had SCH failed to timely
7 complete a qualifying business combination.
8

9
10 48. Defendants Palihapitiya and Osborne were the two managing members of
11 the Sponsor at all relevant times.

12 **Defendant Wu**

13
14 49. Defendant Wu founded Legacy Opendoor in 2014. He served as Legacy
15 Opendoor's CEO from its founding until the Merger and as the Company's CEO and
16 Chairman of the Board from the Merger until December 1, 2022. Since December 2022,
17 he has served as the Company's President of Marketplace and as a Company director.
18 According to the Company's Schedule 14A filed with the SEC on April 27, 2023 (the
19 "2023 Proxy Statement"), as of March 27, 2023, Defendant Wu beneficially owned
20 30,403,853 shares of the Company's common stock, representing 4.70% of the
21 Company's outstanding shares. Given that the price per share of the Company's common
22 stock at the close of trading on March 27, 2023 was \$1.60, Defendant Wu owned
23 approximately \$48.6 million worth of Opendoor stock.
24

25
26 50. For the fiscal year ended December 31, 2020 ("2020 Fiscal Year"),
27 Defendant Wu received \$370,240,992 in compensation from the Company. This included
28

1 \$189,584 in salary and \$370,051,408 in stock awards. For the fiscal year ended December
 2 31, 2021 (“2021 Fiscal Year”), Defendant Wu received \$112,333,540 in compensation
 3 from the Company. This included \$325,100 in salary, \$111,598,143 in stock awards, and
 4 \$410,297 in all other compensation. For the fiscal year ended December 31, 2022 (“2022
 5 Fiscal Year”), Defendant Wu received \$325,000 in compensation from the Company,
 6 consisting entirely of salary.
 7

8 51. During the Relevant Period, while the Company’s stock price was
 9 artificially inflated and before the scheme was exposed, Defendant Wu made the following
 10 sales of Company stock:
 11

Date	Number of Shares	Avg. Price/Share	Proceeds
May 20, 2021	625,687	\$14.93	\$9,341,506
July 16, 2021	186,265	\$14.60	\$2,718,537
August 5, 2021	34,129	\$14.51	\$495,348
August 16, 2021	45,210	\$15.27	\$690,311
October 14, 2021	622,616	\$23.75	\$14,788,997
October 15, 2021	598,868	\$23.61	\$14,137,476
October 18, 2021	173,142	\$24.08	\$4,169,259
November 16, 2021	1,613,498	\$21.79	\$35,151,667
November 17, 2021	702,429	\$21.41	\$15,041,112
November 18, 2021	443,182	\$20.66	\$9,157,912
January 19, 2022	178,219	\$10.16	\$1,811,417
February 16, 2022	63,164	\$11.01	\$695,498
April 18, 2022	180,760	\$8.26	\$1,493,258
May 17, 2022	70,632	\$7.22	\$509,680
July 18, 2022	166,311	\$5.26	\$875,294

1	August 17, 2022	82,288	\$5.26	\$432,834
2	October 10, 2022	100,000	\$2.78	\$277,900
3	October 11, 2022	7,724	\$3.00	\$23,172
4	October 18, 2022	170,320	\$2.60	\$443,002

5 Thus, in total, before the fraud was exposed, he sold 6,064,444 shares of Company stock
6 on inside information, for which he received approximately \$112 million in proceeds. His
7 insider sales, made with knowledge of material nonpublic information before the material
8 misstatements and omissions were exposed, demonstrate his motive in facilitating and
9 participating in the scheme.
10
11

12 52. The 2023 Proxy Statement stated the following about Defendant Wu:

13
14 Eric Wu co-founded Opendoor and has served as President, Marketplace
15 since December 2022 and as a member of our board of directors since April
16 2014. He previously served as our Chief Executive Officer from January
17 2014 to December 2022 and as Chairman of our board of directors from
18 December 2020 to December 2022. Prior to Opendoor, Mr. Wu founded
19 and, from 2009 to 2011, served as the Chief Executive Officer of
20 Movity.com, a geo-data analytics company, until its acquisition by
21 Trulia.com in 2011, after which he served as Head of Geo/Social Products
22 until 2013. Mr. Wu also previously co-founded RentAdvisor.com, an
23 apartment search company specializing in lead generation, in 2008, which
24 was later acquired by Apartment List, Inc. in 2010. Mr. Wu received his
25 B.S. degree in Economics from the University of Arizona.

26
27 Skills and Qualifications: We believe that Mr. Wu is qualified to serve as a
28 member of our Board due to the perspective and experience he brings as our
co-founder and President, Marketplace, and also as our former Chief
Executive Officer and his extensive experience founding and managing real
estate and technology companies.

Defendant Palihapitiya

53. Defendant Palihapitiya served as SCH's CEO and Chairman of the Board from October 2019 until the Merger. Moreover, he and Defendant Osborne share control over the Sponsor.

54. The Merger Proxy Statement stated the following about Defendant Palihapitiya:

Mr. Chamath Palihapitiya has been SCH's Chief Executive Officer and the Chairman of SCH's board of directors since October 2019. Mr. Palihapitiya served as the Chief Executive Officer and the Chairman of the Board of Directors of IPOA from May 2017 until the consummation of its business combination with Virgin Galactic in October 2019, and continues to serve as the Chairman of the Board of Directors of Virgin Galactic. Mr. Palihapitiya also served as a director of Slack Technologies Inc. from April 2014 until October 2019. Prior to founding Social Capital in 2011, Mr. Palihapitiya served as Vice President of User Growth at Facebook, and is recognized as having been a major force in its launch and growth. Mr. Palihapitiya was responsible for overseeing Monetization Products and Facebook Platform, both of which were key factors driving the increase in Facebook's user base to more than 750 million individuals worldwide. Prior to working for Facebook, Mr. Palihapitiya was a principal at the Mayfield Fund, one of the United States' oldest venture firms, before which he headed the instant messaging division at AOL. Mr. Palihapitiya graduated from the University of Waterloo, Canada with a degree in electrical engineering.

Defendant Trieu

55. Defendant Trieu served as SCH's CFO from January 2020 until the Merger.

56. The Merger Proxy Statement stated the following about Defendant Trieu:

Mr. Steven Trieu has been the Chief Financial Officer of SCH since January 2020. Mr. Trieu is a Partner and the Chief Financial Officer of Social Capital, an affiliate of the Company's sponsor, since October 2017 and is responsible for overseeing the operations of Social Capital's family of funds, management company and related entities. Mr. Trieu served as the Chief Financial Officer of IPOA from March 2019 until the

1 consummation of its business combination with Virgin Galactic in
2 October 2019. Prior to joining Social Capital, Mr. Trieu was VP of
3 Finance at Quora, Inc. from October 2011 to June 2016, where he was
4 responsible for its day-to-day finance and legal operations. Prior to that,
5 Mr. Trieu was Director, Finance and Business Operations at Facebook,
6 Inc. from August 2007 to October 2011. Mr. Trieu led the formation of
7 its initial business operations and sales finance teams. Mr. Trieu also
8 previously held a similar role at Yahoo!, Inc., supporting its local markets
and commerce divisions. Before that, Mr. Trieu spent time on Wall Street
both as an investment banking and alternative investments associate.
Mr. Trieu graduated from the University of Massachusetts, Amherst with
a degree in finance and economics.

9 **Defendant Osborne**

10 57. Defendant Osborne served as SCH's President and as a Company director
11 from October 2019 until the Merger. Defendant Osborne also controlled and managed the
12 Sponsor, together with Defendant Palihapitiya, at all relevant times.

13 58. The Merger Proxy Statement stated the following about Defendant Osborne:

14 Mr. Ian Osborne has been a director of SCH since October 2019 and the
15 President since January 2020. Mr. Osborne is the Co-founder and Chief
16 Executive Officer of Hedosophia, an investment firm, which has invested
17 in leading Internet and technology companies since 2012. Mr. Osborne
18 served as a director of IPOA from May 2017 until the consummation of
19 its business combination with Virgin Galactic in October 2019.
20 Mr. Osborne has advised leading Internet and technology companies,
21 their founders and CEOs, since 2009. Mr. Osborne is also the indirect
22 controlling shareholder and a director of Connaught, a financial advisory
23 firm. From 2010 to 2012, Mr. Osborne was a Partner and Managing
24 Director at DST Global, a family of funds investing in Internet
25 companies, which was established in 2009 and which has notable
successes including Alibaba, Airbnb, Facebook, Spotify and Twitter.
Mr. Osborne was educated at St Paul's School, King's College London,
and the London School of Economics.

26 **Defendant Spillane**

27 59. Defendant Spillane served as a Company director from October 2019 until
28

1 the Merger.

2 60. The Merger Proxy Statement stated the following about Defendant Spillane:

3 Mr. David Spillane has been a director of SCH since April 2020.
4 Mr. Spillane is a California licensed Certified Public Accountant and a
5 Fellow of the Institute of Chartered Accountants in Ireland. He works as
6 an advisor to high net worth individuals, and is involved in investing and
7 advising seed stage companies. Mr. Spillane previously served as the
8 Chief Accountant at Stripe, Inc., a private high growth financial payments
9 company operating globally. Prior to that, Mr. Spillane was the Chief
10 Accounting Officer at Facebook from 2009 to 2013, responsible for
11 global accounting and control operations and helping Facebook through
12 its initial public offering in 2012. From 1997 to 2009, Mr. Spillane spent
13 12 years at EY in Dublin, Ireland, San Jose, California and San Francisco,
14 California where he served in the audit practice at all levels up to senior
15 manager. Mr. Spillane holds a Bachelor of Commerce degree from
16 University College Dublin and a Master's degree in Accounting from the
17 Smurfit School of Business at University College Dublin.

18 **Defendant Wheeler**

19 61. Defendant Wheeler has served as the Company's CEO and as a member of
20 the Board since December 2022. She previously served as the Company's CFO from the
21 Merger until December 2022. According to the 2023 Proxy Statement, as of March 27,
22 2023, Defendant Wheeler beneficially owned 2,720,486 shares of the Company's
23 common stock. Given that the price per share of the Company's common stock at the close
24 of trading on March 27, 2023 was \$1.60, Defendant Wheeler owned approximately \$4.4
25 million worth of Opendoor stock.

26 62. For the 2020 Fiscal Year, Defendant Wheeler received \$50,275,445 in
27 compensation from the Company. This included \$114,722 in salary and \$50,060,723 in
28 stock awards. For the 2021 Fiscal Year, Defendant Wheeler received \$350,000 in
compensation from the Company, consisting entirely of salary. For the 2022 Fiscal Year,

Defendant Wheeler received \$383,334 in compensation from the Company, consisting entirely of salary.

63. During the Relevant Period, while the Company's stock price was artificially inflated and before the scheme was exposed, Defendant Wheeler made the following sales of Company stock:

Date	Number of Shares	Avg. Price/Share	Proceeds
June 18, 2021	8,576	\$16.70	\$143,202
June 23, 2021	119,175	\$17.10	\$2,037,892
March 16, 2022	79,912	\$7.41	\$591,748
June 16, 2022	121,742	\$4.53	\$548,919
September 16, 2022	115,378	\$4.07	\$469,011

Thus, in total, before the fraud was exposed, she sold 444,783 shares of Company stock on inside information, for which she received approximately \$3.8 million in proceeds. Her insider sales, made with knowledge of material nonpublic information before the material misstatements and omissions were exposed, demonstrate her motive in facilitating and participating in the scheme.

64. The 2023 Proxy Statement stated the following about Defendant Wheeler:

Carrie Wheeler has served as our Chief Executive Officer and as a member of our Board since December 2022. She previously served as our Chief Financial Officer from September 2020 to December 2022. Ms. Wheeler also previously served as a member of our Board from October 2019 to September 2020. From 1996 to 2017, Ms. Wheeler was with TPG Global, a global private equity firm, including as a Partner and Head of Consumer / Retail Investing. Ms. Wheeler currently serves on the board of directors and on the audit and compensation committees of APi Group Corporation, a global provider of safety and specialty services, since November 2019. She previously served on the board and audit committee of Dollar Tree, inc. from March 2019 to March 2022. Ms. Wheeler has also served on a number of

1 other corporate boards of private and public companies, including Neiman
2 Marcus Group (2005 to 2013) and Petco Animal Supplies (2016 to 2015).
3 Ms. Wheeler received her Bachelor of Commerce degree from Queen's
4 University in Canada.

5 Skills and Qualifications: We believe that Ms. Wheeler is qualified to serve
6 as a member of our Board because of her extensive experience in a
7 leadership role at a global private equity firm, as well as her experience with
8 our company as our Chief Executive Officer and former Chief Financial
9 Officer, and her wealth of experience across different industries.

10 **Defendant Bain**

11 65. Defendant Bain has served as a Company director since the Merger. He also
12 serves as a member of the Audit Committee and the Compensation Committee.
13 Previously, he served as an SCH director from October 2019 until the Merger. According
14 to the 2023 Proxy Statement, as of March 27, 2023, Defendant Bain beneficially owned
15 2,853,016 shares of the Company's common stock. Given that the price per share of the
16 Company's common stock at the close of trading on March 27, 2023 was \$1.60, Defendant
17 Bain owned approximately \$4.6 million worth of Opendoor stock.

18 66. From the Merger through the 2021 Fiscal Year, Defendant Bain received
19 \$282,896 in compensation from the Company, consisting entirely of stock awards. For the
20 2022 Fiscal Year, Defendant Bain received \$233,399 in compensation from the Company.
21 This included \$67,500 in fees earned or paid in cash and \$165,899 in stock awards.

22 67. The 2023 Proxy Statement stated the following about Defendant Bain:

23 Adam Bain has served as a member of our board of directors since
24 December 2020, prior to which he served as a member of SCH's board of
25 directors. Mr. Bain is a co-founder and co-Managing Partner of 01 Advisors,
26 a venture capital firm targeting high-growth technology companies, since
27 January 2018. Mr. Bain has served as a member of the board of directors of
28 Virgin Galactic Holdings Inc., a publicly traded spaceflight company, where

1 he serves as the chair of the nominating and corporate governance
2 committee and as a member of the compensation committee since the
3 consummation of its business combination with Social Capital Hedosophia
4 Holdings Corp. (IPOA), which was a publicly traded special purpose
5 acquisition company (“SPAC”), in October 2019. Prior to that, he served as
6 a member of the board of directors of IPOA from September 2017 to
7 October 2019. Since November 2016, Mr. Bain has also been an
8 independent advisor and investor in select privately held growth-stage
9 companies. Previously, from 2015 to November 2016, Mr. Bain served as
10 the Chief Operating Officer of Twitter, Inc., a publicly traded social media
11 company, and also served as President of Global Revenue & Partnerships
12 from 2010 to 2015. Mr. Bain received his B.A. degree in English Journalism
13 from Miami University in Ohio.

14 Skills and Qualifications: We believe Mr. Bain is qualified to serve as a
15 member of our board of directors because of his significant operating and
16 technology experience and financial experience.

17 **Defendant Herman**

18 68. Defendant Herman has served as a Company director since the Merger. She
19 also serves as the Chair of the Audit Committee. Previously, she served as an SCH director
20 from October 2019 until the Merger. According to the 2023 Proxy Statement, as of March
21 27, 2023, Defendant Herman beneficially owned 168,818 shares of the Company’s
22 common stock. Given that the price per share of the Company’s common stock at the close
23 of trading on March 27, 2023 was \$1.60, Defendant Herman owned approximately
24 \$270,109 worth of Opendoor stock.

25 69. From the Merger through the 2021 Fiscal Year, Defendant Herman received
26 \$636,877 in compensation from the Company, consisting entirely of stock awards. For the
27 2022 Fiscal Year, Defendant Herman received \$235,970 in compensation from the
28 Company. This included \$70,000 in fees earned or paid in cash and \$165,970 in stock
awards.

1 70. The 2023 Proxy Statement stated the following about Defendant Herman:

2 Cipora Herman has served as a member of our Board since December 2020
 3 and previously served as a member of the board of directors of SCH from
 4 May 2020 until the closing of our Business Combination with SCH in
 5 December 2020. Ms. Herman has served on the board of directors of
 6 ZipRecruiter, Inc., a publicly traded online employment marketplace
 7 company, since October 2018, where she also serves as the chair of the audit
 8 committee and a member of the compensation committee. Previously, Ms.
 9 Herman served as the Chief Financial Officer for LA28, The Los Angeles
 10 Organizing Committee for the Olympic and Paralympic Games 2028, from
 11 January 2021 to April 2022. Ms. Herman also served on the board of
 12 directors of MINDBODY, Inc., a software-as-a-service company, from
 13 October 2016 to February 2019. From 2012 to 2016, Ms. Herman served as
 14 the Chief Financial Officer of the San Francisco 49ers, a professional
 15 American football team. Prior to that, Ms. Herman has served in various
 16 leadership roles in large online media and technology companies, including
 17 as Vice President & Treasurer of Facebook, Inc., from 2007 to 2012, and in
 18 various roles at Yahoo! Inc. from 2003 to 2007, including VP Finance and
 19 Treasurer. She also served on private company board of directors, including
 20 Memery, Inc. (dba Overlay) from 2015 to January 2021. Ms. Herman
 21 received her A.B. degree in International Relations, M.A. degree in
 22 International Development Policy and M.B.A degree, each from Stanford
 23 University.

24 Skills and Qualifications: We believe that Ms. Herman is qualified to serve
 25 as a member of our board of directors because of her financial expertise and
 26 experience as a director of publicly and privately held companies.

27 **Defendant Jaffe**

28 71. Defendant Jaffe has served as a Company director since the Merger.
 29 Previously, he served as a Legacy Opendoor director from June 2018 until the Merger. He
 30 also serves as a member of the Nominating and Corporate Governance Committee.
 31 According to the 2023 Proxy Statement, as of March 27, 2023, Defendant Jaffe
 32 beneficially owned 50,097 shares of the Company's common stock. Given that the price
 33 per share of the Company's common stock at the close of trading on March 27, 2023 was

1 \$1.60, Defendant Jaffe owned approximately \$80,155 worth of Opendoor stock.

2 72. From the Merger through the 2021 Fiscal Year, Defendant Jaffe received
3 \$263,726 in compensation from the Company. This included \$57,104 in fees earned or
4 paid in cash and \$206,622 in stock awards. For the 2022 Fiscal Year, Defendant Jaffe
5 received \$218,986 in compensation from the Company. This included \$55,000 in fees
6 earned or paid in cash and \$163,986 in stock awards.
7

8 73. The 2023 Proxy Statement stated the following about Defendant Jaffe:
9

10 Jonathan Jaffe has served as a member of our Board since June 2018. Mr.
11 Jaffe has served as Co-Chief Executive Officer and Co-President of Lennar
12 Corporation, one of the nation's largest homebuilders, since November
13 2020, and as a member of the board of directors since 2018 (and also served
14 as a director from 1997 to 2004). Prior to that, he served in various senior
15 management roles, including, President from April 2018 to November 2020,
16 Chief Operating Officer from December 2004 to January 2019, Vice
17 President from 1994 to April 2018, and a Regional President in Lennar's
Homebuilding operations prior to that. Mr. Jaffe served as a member of the
board of directors of Five Point Holdings, LLC from 2009 to 2020 and
currently serves on the board of one privately held company. Mr. Jaffe
received his B.A. degree in Architecture from the University of Florida.

18 Skills and Qualifications: We believe that Mr. Jaffe is qualified to serve as
19 a member of our board of directors because of his extensive knowledge of
20 the housing industry and his deep operating experience.

21 **Defendant Keffer**

22 74. Defendant Keffer has served as a Company director since the Merger.
23 Previously, he served as a Legacy Opendoor director from October 2015 until the Merger.
24 He also serves as a member of the Audit Committee. According to the 2023 Proxy
25 Statement, as of March 27, 2023, Defendant Keffer beneficially owned 441,414 shares of
26 the Company's common stock. Given that the price per share of the Company's common
27
28

1 stock at the close of trading on March 27, 2023 was \$1.60, Defendant Keffer owned
2 approximately \$706,262 worth of Opendoor stock.

3 75. From the Merger through the 2021 Fiscal Year, Defendant Keffer received
4 \$274,421 in compensation from the Company, consisting entirely of stock awards. For the
5 2022 Fiscal Year, Defendant Keffer received \$225,695 in compensation from the
6 Company. This included \$60,000 in fees earned or paid in cash and \$165,695 in stock
7 awards.
8

9
10 76. The 2023 Proxy Statement stated the following about Defendant Keffer:

11 Pueo Keffer has served as a member of our board of directors since October
12 2015. Mr. Keffer has served as a Managing Director of Access Technology
13 Ventures, the venture capital and growth technology investment arm of
14 Access Industries, Inc. since 2015. From 2009 to 2015, Mr. Keffer served
15 in various roles at Redpoint Ventures, most recently as a Partner. Since
16 2015, he has served on the board of directors of DigitalOcean Holdings, Inc.,
17 a publicly traded cloud computing platform company. He also serves on the
18 board of directors of two privately held companies. Previously, Mr. Keffer
19 was an associate at TA Associates, a growth private equity firm, and a
20 financial analyst at Goldman Sachs & Co. Mr. Keffer received his B.A.
21 degree in Economics from Stanford University.

22 Skills and Qualifications: We believe that Mr. Keffer is qualified to serve as
23 a member of our board of directors because of his extensive experience
24 advising technology companies as a venture capital investor and director of
25 various companies and his financial experience.

26 **Defendant Kilar**

27 77. Defendant Kilar has served as a Company director since the Merger.
28 Previously, he served as a Legacy Opendoor director from March 2019 until the Merger.
He also serves as the Chair of the Nominating and Corporate Governance Committee.
According to the 2023 Proxy Statement, as of March 27, 2023, Defendant Kilar

1 beneficially owned 196,779 shares of the Company's common stock. Given that the price
2 per share of the Company's common stock at the close of trading on March 27, 2023 was
3 \$1.60, Defendant Kilar owned approximately \$314,846 worth of Opendoor stock.

4
5 78. From the Merger through the 2021 Fiscal Year, Defendant Kilar received
6 \$274,421 in compensation from the Company, consisting entirely of stock awards. For the
7 2022 Fiscal Year, Defendant Kilar received \$225,695 in compensation from the Company.
8 This included \$60,000 in fees earned or paid in cash and \$165,695 in stock awards.
9

10 79. The 2023 Proxy Statement stated the following about Defendant Kilar:

11 Jason Kilar has served as a member on our Board since March 2019.
12 Previously, Mr. Kilar served as the Chief Executive Officer of Warner
13 Media, LLC, a media and entertainment subsidiary of its public company
14 parent, Warner Bros. Discovery, Inc. from May 2020 to April 2022. Prior to
15 that, Mr. Kilar co-founded and served as the Chief Executive Officer of
16 Vessel Group, Inc., a video platform company, from 2013 to 2017. Prior to
17 Vessel, Mr. Kilar co-founded and served as the Chief Executive Officer of
18 Hulu, LLC, a streaming service company, from 2007 to 2013. Mr. Kilar also
19 served in a variety of senior leadership roles with Amazon.com, Inc., an e-
20 commerce technology company, from 2002 to 2006, including as Senior
21 Vice President, Worldwide Application Software, and Vice President and
22 General Manager of Amazon's North American media businesses. He has
23 also served on various other private company boards of directors, including
24 Univision Communications Inc. from September 2016 to April 2020 and
25 Brighter Inc. from 2013 until its acquisition by Cigna Corporation in 2017.
26 Mr. Kilar received his B.A. degree in Journalism and Business
27 Administration from University of North Carolina at Chapel Hill and
28 M.B.A. degree from Harvard Business School.

Skills and Qualifications: We believe that Mr. Kilar is qualified to serve as
a member of our Board because of his deep expertise in operations as a Chief
Executive Officer and seasoned board member, and his extensive
experience with technology, high-growth, consumer and digital companies.

Defendant Solomon

80. Defendant Solomon has served as a Company director since the Merger.

1 Previously, he served as a Legacy Opendoor director from February 2015 until the Merger.
2 He also serves as the Chair of the Compensation Committee. According to the 2023 Proxy
3 Statement, as of March 27, 2023, Defendant Solomon beneficially owned 13,209,328
4 shares of the Company's common stock, or 2.04% of the total outstanding stock of the
5 Company. Given that the price per share of the Company's common stock at the close of
6 trading on March 27, 2023 was \$1.60, Defendant Solomon owned approximately
7 \$21,134,925 worth of Opendoor stock.
8
9

10 81. From the Merger through the 2021 Fiscal Year, Defendant Solomon
11 received \$280,077 in compensation from the Company, consisting entirely of stock
12 awards. For the 2022 Fiscal Year, Defendant Solomon received \$230,827 in compensation
13 from the Company. This included \$65,000 in fees earned or paid in cash and \$165,827 in
14 stock awards.
15

16 82. The 2023 Proxy Statement stated the following about Defendant Solomon:
17

18 Glenn Solomon has served as a member of our board of directors since
19 February 2015. Mr. Solomon has been a Managing Partner of GGV Capital,
20 a venture capital firm, since 2006, and as a director of Hashicorp, Inc., a
21 publicly traded software company, since September 2014, where he also
22 serves as chair of the compensation committee and as a member of the audit
23 committee. He also serves as a director of a number of privately held
24 companies and previously served as a director of Domo, Inc., a cloud
25 software company from August 2017 to March 2019. Mr. Solomon received
26 his B.A. degree in Public Policy from Stanford University and M.B.A. from
27 Stanford University.
28

Skills and Qualifications: We believe that Mr. Solomon is qualified to serve
as a member of our board of directors because of his extensive experience
advising technology companies as a venture capital investor and director of
various companies.

Defendant Rice

83. Defendant Rice has served as a Company director and as the Board's Lead Independent Director since March 2021. Previously, he served as a Legacy Opendoor director until the Merger. He also serves as a member of the Nominating and Corporate Governance Committee. According to the 2023 Proxy Statement, as of March 27, 2023, Defendant Rice beneficially owned 69,036 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on March 27, 2023 was \$1.60, Defendant Rice owned approximately \$110,458 worth of Opendoor stock.

84. From the Merger through the 2021 Fiscal Year, Defendant Rice received \$627,711 in compensation from the Company. This included \$43,510 in fees earned or paid in cash and \$584,201 in stock awards. For the 2022 Fiscal Year, Defendant Rice received \$220,552 in compensation from the Company. This included \$55,000 in fees earned or paid in cash and \$165,552 in stock awards.

85. The 2023 Proxy Statement stated the following about Defendant Rice:

John Rice has served as a member of our board of directors since March 2021. Mr. Rice is the founder and Chief Executive Officer of Management Leadership for Tomorrow ("MLT"), a national non-profit organization founded in 2001 that fights racial and economic disparities by empowering a new generation of diverse leaders. Prior to MLT, Mr. Rice was an executive with the National Basketball Association ("NBA") from 1996 to 2000, where he served in various roles, including as Managing Director of NBA Japan and as Director of Marketing for Latin America. Prior to that, Mr. Rice spent four years with the Walt Disney Company in new business development and marketing and two years with AT&T. Since 2010, Mr. Rice has served as a member of the board of directors of Walker & Dunlop, Inc. a publicly traded real estate finance company, where he also serves as chair of the nominating and corporate governance committee and

1 as a member of the compensation committee. He also serves on the board of
 2 directors of Morgan Stanley Real Estate's Prime Property Fund, a privately
 3 held diversified real estate fund. Mr. Rice is also a member of the Yale
 4 University board of trustees. Mr. Rice received his B.A. degree from Yale
 5 University and M.B.A. degree from Harvard Business School.

6 Skills and Qualifications: We believe that Mr. Rice is qualified to serve as
 7 a member of our board of directors because of his executive leadership
 8 skills, strategic planning experience, public company experience and
 9 extensive expertise in driving talent development and fostering diversity and
 10 inclusion efforts across organizations.

11 **THE COMPANY'S CODE OF CONDUCT, AUDIT COMMITTEE CHARTER,**
 12 **AND CORPORATE GOVERNANCE**

13 *SCH's Code of Ethics*

14 86. SCH's Code of Ethics and Business Conduct ("Code of Ethics") begins by
 15 stating it is "applicable to all of the Company's directors, officers and employees" and
 16 was adopted to:

- 17 • promote honest and ethical conduct, including the ethical handling of
 18 actual or apparent conflicts of interest between personal and
 19 professional relationships;
- 20 • promote the full, fair, accurate, timely and understandable disclosure
 21 in reports and documents that the Company files with, or submits to,
 22 the Securities and Exchange Commission (the "*SEC*"), as well as in
 23 other public communications made by or on behalf of the Company;
- 24 • promote compliance with applicable governmental laws, rules and
 25 regulations;
- 26 • deter wrongdoing; and
- 27 • require prompt internal reporting of breaches of, and accountability
 28 for adherence to, this Code.

87. The Code of Ethics states that "[e]ach person owes a duty to the Company
 to act with integrity. Integrity requires, among other things, being honest, fair and candid.
 Deceit, dishonesty and subordination of principle are inconsistent with integrity." It also

1 provides that “[s]ervice to the Company should never be subordinated to personal gain
2 and advantage.”

3 88. In a section titled “Honest, Ethical and Fair Conduct,” the Code of Ethics
4 provides that “each person must”:
5

- 6 • Act with integrity, including being honest and candid while still
7 maintaining the confidentiality of the Company’s information where
8 required or when in the Company’s interests;
- 9 • Observe all applicable governmental laws, rules, and regulations;
- 10 • Comply with the requirements of applicable accounting and auditing
11 standards, as well as Company policies, in order to maintain a high
12 standard of accuracy and completeness in the Company’s financial
13 records and other business-related information and data;
- 14 • Adhere to a high standard of business ethics and not seek competitive
15 advantage through unlawful or unethical business practices;
- 16 • Refrain from taking advantage of anyone through manipulation,
17 concealment, abuse of privileged information, misrepresentation of
18 material facts or any other unfair-dealing practice;
- 19 • Protect the assets of the Company and ensure their proper use;

20 89. The Code of Ethics, under “Disclosure,” provides that SCH “strives to
21 ensure that the contents of and the disclosures in the reports and documents that the
22 Company files with the SEC and other public communications shall be full, fair, accurate,
23 timely and understandable in accordance with applicable disclosure standards, including
24 standards of materiality, where appropriate.”

25 90. The Code of Ethics, under “Compliance,” provides that it is SCH’s
26 “obligation and policy to comply with all applicable governmental laws, rules and
27
28

1 regulations. All directors, officers and employees of the Company are expected to
2 understand, respect and comply with all of the laws, regulations, policies and procedures
3 that apply to them in their positions with the Company. Employees are responsible for
4 talking to their supervisors to determine which laws, regulations and Company policies
5 apply to their position and what training is necessary to understand and comply with
6 them.”
7

8 ***Opendoor Code of Conduct***
9

10 91. The Opendoor Code of Conduct (the “Code of Conduct”) states that the
11 Company is “committed to upholding the highest standards of business conduct and ethics
12 across our family of companies” and that the Code “reflects our values and commitment
13 to fostering behaviors that live up to our ethical standards.”
14

15 92. The Code of Conduct also states the Company expects “every employee,
16 officer and director to read and understand the Code and its application to the performance
17 of their business responsibilities, and to develop a sense of commitment to the spirit of the
18 Code, not just the words.”
19

20 93. The Code of Conduct further states in the section titled, “We Live Our
21 Values” that it “is the policy of Opendoor to promote high standards of integrity by
22 conducting our affairs in an honest and ethical manner. The integrity and reputation of our
23 company depends on the honesty, fairness and integrity brought to the job by each person
24 associated with Opendoor. Unyielding personal integrity is the foundation of corporate
25 integrity.”
26
27
28

1 94. In another section titled “We Avoid Conflicts of Interest,” the Code of
2 Conduct states the following, in relevant part:

3 We respect the rights of our team members to manage their personal affairs
4 and investments and do not wish to impinge on their personal lives. That
5 said, team members should be careful to ensure that their personal interests
6 do not interfere in any way with the performance of their duties or the best
7 interests of Opendoor. A conflicting personal interest could result from an
8 expectation of personal gain now or in the future or from a need to satisfy a
9 prior or concurrent personal obligation. Avoiding potential conflicts of
10 interest also means that you should not use, or allow others to use, Opendoor
11 products, services, internal tools, or information in a way that improperly
12 benefits you or someone you know or creates the appearance that you or
13 they have received an advantage over others. We expect our employees to
14 be free from influences that conflict with the best interests of Opendoor.
15 Even the appearance of a conflict of interest where none actually exists can
16 be damaging and should be avoided. Conflicts of interest are prohibited
17 unless specifically authorized.

18 95. In another section titled, “We Are Loyal,” the Code of Conduct states that
19 “[y]ou may not take personal advantage of opportunities for Opendoor that are presented
20 to you or discovered by you as a result of your position with us or through your use of
21 corporate property or information. Even opportunities that are acquired privately by you
22 may be questionable if they are related to our existing or proposed lines of business. You
23 may not use your position with us or corporate property or information for improper
24 personal gain, nor should you compete with us in any way.”

25 96. Under a section titled, “We Maintain Financial Integrity,” the Code of
26 Conduct states the following, in relevant part:

27 The integrity of our records and public disclosure depends upon the
28 accuracy and completeness of the information supporting the entries to our
books of account. We rely on our team members to ensure that our corporate
and business records are completed accurately and honestly. The making of
false or misleading entries, whether they relate to financial results or other

1 operational results, is strictly prohibited. Our records serve as a basis for
2 managing our business and are important in meeting our obligations to
3 customers, suppliers, creditors, team members and others with whom we do
4 business. It is of the utmost importance that our books, records and accounts
5 accurately and fairly reflect, in reasonable detail, our assets, liabilities,
6 revenues, costs and expenses, as well as all transactions and changes in
7 assets and liabilities.

8 97. In the same section, the Code of Conduct provides the following regarding
9 SEC filings and public financial statements:
10

11 We also rely on our accounting records to produce reports for our
12 management, directors, stockholders and creditors, as well as for
13 governmental agencies. In particular, we rely upon our accounting and other
14 business and corporate records in preparing the periodic and current reports
15 that we file with the Securities and Exchange Commission (the “SEC”).
16 Securities laws require that these reports provide full, fair, accurate, timely
17 and understandable disclosure and fairly present our financial condition and
18 results of operations. Team members who collect, provide or analyze
19 information for or otherwise contribute in any way in preparing or verifying
20 these reports should strive to ensure that our financial disclosure is accurate
21 and transparent and that our reports contain all of the information about
22 Opendoor that would be important to enable stockholders and potential
23 investors to assess the soundness and risks of our business and finances and
24 the quality and integrity of our accounting and disclosures.

25 98. Under a section titled, “We Conduct Business Fairly,” the Code of Conduct
26 states that “we are committed to doing business with fairness, integrity and honesty. We
27 maintain our advantages over competitors through the superior performance of our
28 products and services, not through unethical or illegal business practices.”

99. Under a section titled “We Safeguard And Protect Our Company Assets,”
the Code of Conduct states the following, in relevant part:

All team members are expected to protect our assets and ensure their
efficient use. Theft, carelessness and waste have a direct impact on our
profitability. Our physical property, such as office supplies, computer
equipment, and buildings, as well as our services, internal tools and data are

1 expected to be used only for legitimate business purposes, although
2 incidental personal use may be permitted. You may not, however, use our
3 corporate name, any brand name or trademark owned or associated with
4 Opendoor or any letterhead stationery for any personal purpose. All data
5 residing on or transmitted through our computing and communications
6 systems, including email and documents, is the property of Opendoor and
7 subject to inspection, retention and review by Opendoor, with or without a
8 team member's or third party's knowledge, consent or approval, in
9 accordance with applicable law. Any misuse or suspected misuse of our
10 assets must be immediately reported to your manager or the Compliance
11 Officer.

12
13 100. In a section titled "We Comply With Laws," the Code of Conduct provides
14 the following:

15 Obeying the law, both in letter and in spirit, is the foundation of the Code.
16 Our success depends upon each team member operating within legal
17 guidelines and cooperating with local, national and international authorities.
18 We expect team members to understand the legal and regulatory
19 requirements applicable to their business units and areas of responsibility.
20 While we do not expect you to memorize every detail of these laws, rules
21 and regulations, we want you to be able to determine when to seek advice
22 from others. If you have a question in the area of legal compliance, it is
23 important that you not hesitate to seek answers from your manager or the
24 Legal Team. Disregard of the law will not be tolerated. Violation of
25 domestic or foreign laws, rules and regulations may subject an individual,
26 as well as Opendoor, to civil and/or criminal penalties. You should be aware
27 that conduct and records, including emails, are subject to internal and
28 external audits and to discovery by third parties in the event of a government
investigation or civil litigation. It is in everyone's best interests to know and
comply with our legal obligations.

101. Under a subsection titled, "Insider Trading," the Code of Conduct states the
following:

Employees who have access to material, non-public information ("inside
information") about Opendoor or about other companies with which
Opendoor has business dealings are not permitted to use or share that
information for stock trading purposes or for any other purpose except to
conduct our business. Use of inside information by someone for personal
gain, or to pass on, or "tip," the inside information to someone who uses it

1 for personal gain, is illegal, regardless of the quantity of shares, and is
 2 therefore prohibited. You can be held liable both for your own transactions
 3 and for transactions effected by a person who receives the tip, even if
 4 indirectly through another person. Team members must exercise the utmost
 care when handling inside information. Please review Opendoor's Insider
 Trading and Trading Window Policy for additional information.

5 102. In the same section, the Code of Conduct provides that "[i]t is the
 6 responsibility of all employees, officers and directors to comply with all applicable laws,
 7 regulations, governmental policies, the Code and the Company's related policies and
 8 procedures. It is the responsibility of all Company supervisory personnel to monitor
 9 compliance with this Code. The Board of Directors will periodically review for
 10 compliance with the Company's policies and procedures."
 11

13 *Audit Committee Charter*

14 103. The Charter of the Audit Committee of the Board of Directors of Opendoor
 15 Technologies, Inc. (the "Audit Committee Charter") defines the responsibilities of the
 16 Company's Audit Committee.
 17

18 104. Per the Audit Committee Charter, the Audit Committee's purpose is to
 19 "oversee the accounting and financial reporting processes of the Company and the audits
 20 of the financial statements of the Company."
 21

22 105. The Audit Committee Charter lists the Audit Committee's responsibilities,
 23 some of which are to review the following:
 24

- 25 • the adequacy and effectiveness of the Company's accounting and
 26 internal control policies and procedures on a regular basis, including the
 27 responsibilities, budget, compensation and staffing of the Company's
 internal audit function, if any, through inquiry and discussions with the
 28 Company's independent auditors, management and the Company's
 corporate controller or chief accounting officer, if any;

- if applicable, the yearly report prepared by management, and attested to by the Company's independent auditors, assessing the effectiveness of the Company's internal control over financial reporting and stating management's responsibility for establishing and maintaining adequate internal control over financial reporting prior to its inclusion in the Company's Annual Report on Form 10-K.
- all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information.
- any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.
- the Company's administrative, operational and accounting internal controls, including any special audit steps adopted in light of the discovery of material control deficiencies.
- Review and discuss with management and the independent auditors the Company's audited financial statements, including the matters required to be discussed by applicable Public Company Accounting Oversight Board standards and SEC rules.

106. In violation of the SCH Code of Ethics, the Code of Conduct, and the Audit Committee Charter, the Defendants conducted little, if any, oversight of the Individual Defendants' scheme to issue materially false and misleading statements to the public and to facilitate and disguise the Individual Defendants' and the Sponsor's engagement in or effectuation of the Overpayment Misconduct and violations of Section 14(a) of the Exchange Act. Also in violation of SCH's and Opendoor's corporate governance documents, the Defendants failed to maintain the accuracy of SCH and Opendoor reports and other documents filed with the SEC, comply with laws and regulations, conduct business in an honest and ethical manner, ensure the efficient and responsible use of SCH's and Opendoor's assets and resources by SCH and Opendoor, and oversee the

1 integrity of financial information provided by SCH and Opendoor to their shareholders,
2 the public, and any stock exchange.

3 107. The Individual Defendants who were at the Company before and after the
4 Merger conducted little, if any, oversight of the Individual Defendants' scheme to issue
5 materially false and misleading statements to the public and to facilitate and disguise the
6 Individual Defendants' violations of law, including violations of Section 14(a) of the
7 Exchange Act. Also in violation of the Company's corporate governance documents, the
8 Individual Defendants who were at the Company before and after the Merger failed to
9 maintain the accuracy of Company records and reports, comply with laws and regulations,
10 oversee the integrity of the Company's financial statements, and maintain internal
11 controls.
12
13
14

15 **INDIVIDUAL DEFENDANTS' MISCONDUCT**

16 **Background**

17 ***Background of SCH***

18 108. SCH was incorporated in the Cayman Islands on October 18, 2019, as a
19 special purpose acquisition company (i.e., a SPAC) formed for the purpose of effecting a
20 merger, capital stock exchange, or similar business combination with one or more
21 businesses. It was managed by the Sponsor, SCH Sponsor II LLC, which was jointly
22 controlled by Defendants Palihapitiya and Osborne.
23
24

25 109. SCH was one of many SPACs founded by former Facebook executive
26 Defendant Palihapitiya, along with his long-time business partners and venture capitalists
27 Defendant Bain and British technology investor Defendant Osborne. After accumulating
28

1 wealth from working in Silicon Valley, Defendant Palihapitiya founded Social Capital, a
2 venture capital firm, in 2011. Since then, Defendant Palihapitiya has relentlessly pushed
3 SPAC mergers on private companies such as Richard Branson’s Virgin Galactic and
4 healthcare technology firm Clover Health Investments.⁵ Indeed, Defendant Palihapitiya is
5 notorious for pushing SPACs; he has been dubbed the “SPAC king” and the “evangelist
6 and the apostle of SPACs.”⁶
7

8
9 110. Defendant Palihapitiya served as the CEO and Chairman of the Board of
10 SCH, while Defendant Osborne served as the President and as a director of SCH.
11 Together, Defendants Palihapitiya and Osborne have incorporated numerous SPACs,
12 including Social Capital Hedosophia Holdings Corp. III (“IPOC”), Social Capital
13 Hedosophia Holdings Corp. IV (“IPOD”), Social Capital Hedosophia Holdings Corp. V
14 (“IPOE”), and Social Capital Hedosophia Holdings Corp. VI (“IPOF”). To this end,
15 Defendant Osborne has served as the President of IPOC, IPOD, IPOE and IPOF. Both
16
17
18
19

20 ⁵ Defendant Palihapitiya, targeting everyday investors through appearances on CNBC and
21 via his busy X account (formerly known as Twitter), drove, at least initially, Virgin
22 Galactic’s and Clover Health’s publicly traded stock to staggering prices after the SPACs
23 he founded and controlled merged with those companies. However, following their
24 respective mergers, both companies’ common stock quickly nosedived in value, but not
25 before Defendant Palihapitiya sold his massive interests in the companies for hefty
26 personal profits. Defendant Bain, Defendant Trieu, and Defendant Osborne were involved
27 in the Virgin Galactic and Clover Health mergers; Bain personally received over \$10
28 million for his role in the Virgin Galactic merger while Osborne and Palihapitiya received
a whopping \$864 million worth of Virgin Galactic stock because of the merger.
Unfortunately, the story remains the same in this case.

⁶ Maureen Farrell, The ‘SPAC King’ Is Over It,” The New York Times, Dec. 7, 2022,
<https://www.nytimes.com/2022/12/07/business/chamath-palihapitiya-spac-investors.html>.

1 IPOD and IPOF were shuttered in September 2022 after failing to find merger targets.⁷

2 111. SCH was incorporated in the Cayman Islands on October 18, 2019. SCH's
3 most significant investor was the Sponsor, managed and controlled by Defendants
4 Palihapitiya and Osborne. Several of the Individual Defendants were direct or indirect
5 members of the Sponsor.
6

7 112. Initially, as noted in its draft registration statement filed with the SEC on
8 January 20, 2020, SCH's stated business targets were companies in the technology
9 industries. Indeed, SCH's directors and officers held themselves out to investors as highly
10 experienced in the technology and finance industries, which they repeatedly stated would
11 be SCH's focus for completing a merger.
12

13 113. Prior to SCH's IPO, the Sponsor purchased an aggregate of 8,625,000
14 Founder Shares for an aggregate purchase price of \$25,000 in cash, or approximately
15 \$0.003 per share. In March 2020, the Sponsor transferred 100,000 of the Founder Shares
16 to each of Defendant Spillane and Defendant Herman, who served as two of SCH's
17 independent directors.
18

19 114. On April 27, 2020, SCH effected a pro rata share capitalization that
20 increased the number of outstanding Founder Shares from 8,625,000 to 10,350,000,
21 thereby ensuring that the Sponsor would retain 20% of the total issued and outstanding
22 shares of SCH upon the consummation of SCH's IPO. Through the issuance of the
23
24
25

26
27 ⁷ Dan Primack, "Chamath Palihapitiya is shuttering two tech SPACs," Axios, Sept. 20,
28 2022, <https://www.axios.com/2022/09/20/chamath-palihapitiya-spacs>.

1 Founder Shares, the Sponsor, and by their joint control of the Sponsor, Defendants
2 Palihapitiya and Osborne, collectively owned approximately 20% of SCH's issued and
3 outstanding shares of common stock as of the date of the Merger Proxy Statement. The
4 Merger Proxy Statement reported that each of Defendants Palihapitiya and Osborne may
5 be deemed as beneficial owners of the Founder Shares held by the Sponsor.
6

7 115. Just three days later, SCH held its IPO on April 30, 2020, selling 41.4
8 million common shares to the investing public for \$10.00 per share, raising \$414 million
9 in proceeds. The common stock shares had redemption and liquidation rights. Specifically,
10 if SCH failed to complete a business combination within 24 months of incorporation, SCH
11 would liquidate, and public shareholders would receive \$10.00 per share back with
12 interest. If SCH found a target company, public shareholders had the option to redeem
13 their shares for \$10.00 per share plus interest.
14

15 116. During the IPO, the Sponsor bought 6,133,333 Private Placement Warrants
16 for \$1.50 per unit for a total purchase price of \$9,200,000. The Private Placement Warrants
17 were composed of a warrant that entitled the holder to purchase a share of SCH Class A
18 common stock. After the Merger, the warrant holder was entitled to purchase one common
19 share of Opendoor common stock. The Private Placement Warrants were subject to a lock-
20 up provision. However, in contrast to the public IPO shares, the Private Placement
21 Warrants did not enjoy liquidation or redemption rights.
22

23 117. The \$414 million in proceeds from the IPO was put into the Trust, which
24 required that the shares be redeemed in the first instance, contributed to a merger, or
25 returned to shareholders in the event of liquidation. In other words, the Trust was
26
27
28

1 established to safeguard two key rights held by SCH shareholders under SCH's
2 Certificate of Incorporation: (1) the right to redeem their shares at \$10.00 per share price
3 instead of investing in the business combination; and (2) in the event SCH was unable to
4 timely complete the business combination, the right to receive a return of all IPO
5 proceeds.
6

7 118. However, as certain of the Individual Defendants had either a direct or
8 indirect economic interest in the Founder Shares and Private Placement Warrants, their
9 financial interests were misaligned with those of SCH shareholders. These conflicts of
10 interest only worsened once SCH determined it would complete a business combination
11 with Legacy Opendoor. Pursuant to SCH's Certificate of Incorporation, SCH had only
12 24 months from the date of the IPO's closing, or until April 30, 2022, to complete a
13 business combination. This meant that, in the event SCH failed to complete a business
14 combination by that time, SCH would have had to: (1) cease all its operations, except
15 those made for the purposes of winding up the Company's affairs and liquidating; (2)
16 redeem public shares; and (3) dissolve and liquidate the funds held in the Trust to return
17 to SCH's investors. Because each of SCH's officers and directors agreed to waive their
18 rights to liquidating distributions from the Trust, the \$414 million Founder Shares and
19 Private Placement Warrants would have been rendered worthless to them in the event
20 SCH failed to timely complete a business combination.
21
22

23 119. Throughout the Relevant Period, the Individual Defendants associated with
24 SCH represented themselves to the investing public as having substantial experience in
25
26
27
28

1 identifying targets and acquiring businesses. In particular, the Individual Defendants
 2 touted their experience with investments and SPAC IPOs.

3 ***Background of Legacy Opendoor***

4
 5 120. In 2014, Defendant Wu and nonparty Ian Wong co-founded Legacy
 6 Opendoor, then called “Opendoor Labs Inc.” to “redefine real estate.” To achieve this
 7 goal, Legacy Opendoor attempted to design an AI algorithm that could process, identify,
 8 and predict trends in the housing market so that Legacy Opendoor could quickly and
 9 efficiently cash-buy and re-sell homes for a profit.
 10

11 121. Legacy Opendoor’s proprietary AI algorithm was integral to its business,
 12 serving as the company’s own stated-reason why Legacy Opendoor was superior to its
 13 iBuying competitors, such as Zillow. Indeed, Legacy Opendoor maintained that, contrary
 14 to the traditional residential real estate industry, which largely relied on human judgments
 15 and limited access to data, Legacy Opendoor “built world-class data science capabilities
 16 and systematized tooling to gather, aggregate and synthesize an expanding catalog of
 17 proprietary, hyperlocal data in order to improve and automate pricing decisions.”
 18 Importantly, Legacy Opendoor maintained that because of its powerful algorithm, Legacy
 19 Opendoor was positioned to consistently increase its contribution margin in the future,
 20 which is a key metric in the real estate industry that signals success in accurately pricing
 21 and selling homes for profit.⁸ The Merger Proxy Statement discussed Legacy Opendoor’s
 22
 23
 24
 25

26 ⁸ Per Investopedia, contribution margin indicates how a particular product contributes to
 27 the overall profit of a company. Essentially, contribution margin is the selling price per
 28 product minus the variable cost per product.
<https://www.investopedia.com/terms/c/contributionmargin.asp>.

1 contribution margins at levels between 1.9% to 3.5%, with the clear expectation that the
2 percentage would rise. Little did investors know that during the Relevant Period,
3 Opendoor's contribution margin would fall into the negatives.

4
5 122. Legacy Opendoor, in the Merger Proxy Statement and in investor
6 presentations leading up to the Merger, emphasized that one of Legacy Opendoor's main
7 goals of merging with SCH was to capture more of the U.S. housing market by expanding
8 its market presence fivefold.⁹ Indeed, Defendant Wu stated on CNBC that "Originally, a
9 SPAC deal wasn't the route we wanted to take...a couple things drew us to this path. One
10 was speed to market."¹⁰

11
12 ***The Individual Defendants Needed the Merger to Close to Obtain Lucrative***
13 ***Compensation***

14 123. On May 13, 2020, during a phone call between Defendant Bain and a
15 member of SCH's board of directors, the SCH director mentioned that Defendant Wu
16 might be interested in learning about SPACs and potentially pursuing a SPAC to effectuate
17 a merger with Legacy Opendoor. The SCH director floated the idea knowing that
18 Defendant Bain and Defendant Wu have been acquainted for several years as a result of
19 their work in the tech industry. Indeed, Defendant Bain served as the Chief Operating
20 Officer of X (formerly known as Twitter) while Defendant Wu was working at Facebook.
21
22
23
24
25

26 ⁹ E.B. Solomont, "This man wants to make your home a commodity," The Real Deal: Real
27 Estate News, Oct. 19, 2020, [https://therealdeal.com/magazine/national-october-2020/this-](https://therealdeal.com/magazine/national-october-2020/this-man-wants-to-make-your-home-a-commodity/)
28 [man-wants-to-make-your-home-a-commodity/](https://therealdeal.com/magazine/national-october-2020/this-man-wants-to-make-your-home-a-commodity/).

¹⁰ *Id.*

1 124. Throughout June 2020, Defendants Bain and Wu discussed, through several
2 phone calls and emails, a potential SPAC merger between one of Defendant Bain’s SPACs
3 and Legacy Opendoor. On June 29, 2020, Defendant Bain introduced Defendant Wu to
4 Defendant Palihapitiya and Defendant Osborne via a video teleconference. During the
5 conference, the group, including representatives from Legacy Opendoor, discussed a
6 possible SPAC merger with Legacy Opendoor.
7

8 125. Originally, Defendant Palihapitiya, Defendant Osborne, and Defendant
9 Bain wanted Legacy Opendoor to merge with another of their SPACs (“SPAC A”) which
10 had a larger amount of money in its fund than SCH. However, between July 27, 2020 and
11 July 28, 2020, Legacy Opendoor requested that SPAC A be eliminated from discussions
12 and that SCH be inserted into discussions. According to the Merger Proxy Statement,
13 Legacy Opendoor “representatives were concerned that merging with SPAC A would
14 overly dilute Legacy Opendoor shareholders.” Defendants Palihapitiya and Osborne
15 agreed and told Defendant Bain of their decision on July 28, 2020.
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18

19 **The Overpayment Misconduct**

20 126. The next day, on July 29, 2020, Defendant Bain told representatives of SCH
21 that Defendant Wu felt that Legacy Opendoor should be valued at \$5 billion and that
22 Legacy Opendoor would not agree to more than \$300 in public equity (“PIPE”) financing.
23

24 127. On July 30, 2020, SCH executed a mutual non-disclosure agreement
25 (“NDA”) with Legacy Opendoor. After the NDA was signed, Legacy Opendoor began
26 furnishing confidential information concerning Legacy Opendoor’s business operations
27 to SCH.
28

1 128. On August 2, 2020, Defendant Wu emailed Defendant Bain informing
2 Defendant Bain that Legacy Opendoor's board of directors, which included Defendants
3 Jaffe, Keffer, Solomon, and Wheeler, would review and revise a non-binding letter of
4 intent regarding the potential Merger.
5

6 129. Two days later, Defendant Bain emailed Defendant Wheeler, who then
7 served on Legacy Opendoor's board of directors, to communicate changes that would be
8 made to the non-binding letter of intent regarding the potential Merger. One of the changes
9 increased the PIPE investment from \$400 to \$600 million. Defendant Bain and Defendant
10 Wheeler also discussed on a telephone call that day the increase in PIPE investment
11 financing and specific entries on Legacy Opendoor's balance sheet, including "excess
12 cash."
13
14

15 130. The Sponsor-based PIPE investors eventually agreed to fund \$160,250,000
16 of the total PIPE financing. Defendant Palihapitiya subscribed for 10,000,000 shares of
17 Opendoor stock through his entity ChaChaCha SPAC B, LLC; Defendant Osborne
18 subscribed for 5,800,000 shares of Opendoor stock through his entity Hedosophia Group
19 Limited; Defendant Bain subscribed for 225,000 shares of Opendoor stock through his
20 entity 010118 Management, L.P.; Defendant Wu subscribed for 25,000 shares of
21 Opendoor stock; and Defendant Wheeler subscribed for 150,000 shares of Opendoor
22 stock.
23
24

25 131. On August 7, 2020, Defendant Bain and Defendant Palihapitiya, along with
26 the rest of the SCH board of directors (Defendants Spillane, Osborne, and Herman),
27 discussed the terms of the Merger via email. The emails included a copy of an investor
28

1 presentation prepared by Legacy Opendoor management pertaining to the valuation and
2 business background of Legacy Opendoor. Defendant Palihapitiya also solicited questions
3 from the SCH board of directors (Defendants Bain, Spillane, Osborne, and Herman). That
4 same day, Defendant Osborne, on behalf of SCH, and Defendant Wu, on behalf of Legacy
5 Opendoor, executed a final version of the non-binding letter of intent (“LOI”). The LOI
6 provided, among other things, for a \$5 billion valuation, that the PIPE investment would
7 be \$400 million, that at least \$100 million of the \$400 million would be from Sponsor-
8 identified entities, and that at least \$100 million of the \$400 million would be invested by
9 Legacy Opendoor investors.
10
11

12 132. Importantly, the PIPE financing, which was largely supported by
13 Defendants Wu, Wheeler, Bain, Palihapitiya, and Osborne, was entirely contingent on the
14 closing of the Merger.
15

16 133. Tellingly, the Defendants at SCH refused to obtain a fairness opinion from
17 the Company’s financial advisors, any independent valuation, or any advice by
18 independent counsel in determining whether to proceed with the Merger and exchange
19 hundreds of millions of its own shares in connection therewith.
20

21 134. Instead, the Individual Defendants and the Sponsor and the Director-
22 Defendants (defined below) relentlessly pushed investors to approve a deal that was worth
23 little to nothing, and far less than what investors would have received had SCH liquidated
24 as planned.
25
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1 135. Indeed, in lieu of a neutral assessment of the company's valuation, Legacy
2 Opendoor provided SCH and its investors with a massive \$5 billion valuation and further
3 misled investors as they prepared to vote on the Merger.
4

5 136. Despite this dreary reality, Defendants painted Opendoor as a market
6 "disrupter" in the United States residential real estate market. These representations could
7 not have been further from the truth.
8

9 137. Far from a market "disrupter" with a "proprietary" AI algorithm, Legacy
10 Opendoor was plagued with technological and practical challenges that inhibited
11 Defendants from knowing or representing anything concrete about the Company's
12 commercial viability. However, this did not stop Defendants from concocting a false
13 image of Legacy Opendoor and its future prospects post-Merger.
14

15 138. Basic due diligence would have revealed these issues and would have
16 required a Company fiduciary to steer away from the value-destroying asteroid SCH was
17 headed towards. The Individual Defendants did the opposite, proceeding full speed ahead
18 without any indication that SCH's fiduciaries made any reasonable or basic investigation
19 into Legacy Opendoor's affairs. Indeed, there is no indication that the SCH board ever
20 held any meetings to discuss the substantive pros and cons for SCH shareholders of
21 pursuing the Merger or received any written materials related to its diligence in connection
22 therewith.
23

24
25 139. Despite this, SCH and Legacy Opendoor executed the Merger Agreement.
26 That same day, SCH and Legacy Opendoor issued a joint press release announcing the
27 Merger Agreement. The Merger closed on December 17, 2020. Immediately after the
28

1 closing of the Merger, Defendants Wu and Wheeler received lucrative employment
2 contracts, Defendant Palihapitiya, along with Defendants Bain, Osborne, Spillane, and
3 Herman, received windfalls from their shared ownership of the then-converted Founder
4 Shares, and Defendants Wu, Bain, Herman, Solomon, Kilar, Keffer, and Jaffe received
5 directorships on Opendoor's Board, along with handsome benefits provided by the
6 shareholders who approved the Incentive Plan.
7

8 140. Proceeding with the Merger proved costly in numerous ways, including by
9 exposing SCH, the Sponsor, and the other Defendants to several costly lawsuits against
10 the Company, such as the Securities Class Action, among other things.
11

12 ***Legacy Opendoor's AI Algorithm Suffers from Significant Issues Requiring***
13 ***Human Input Both Before and After the Merger***

14 141. Contrary to the Individual Defendants' representations both before and after
15 the Merger, Legacy Opendoor and Opendoor were enduring hardships from AI algorithm
16 issues and from the Company's use of fraudulent repair charges to maintain profitability.
17

18 142. Indeed, despite representing to shareholders and the market that Legacy
19 Opendoor had an algorithm that produced "fully automated home valuations," the
20 Company's algorithm required human input and judgment, and was otherwise far afield
21 from what the Individual Defendants portrayed to investors both before and after the
22 Merger.
23

24 143. The Securities Class Action interviewed eight separate employees of Legacy
25 Opendoor, all of whom corroborated these circumstances. Two of the former employees
26 interviewed worked for Legacy Opendoor well before the consummation of the Merger.
27
28

1 For example, CW-5, worked as an Acquisition Associate at Legacy Opendoor and
2 Opendoor from November 2018 until March 2020. As an Acquisition Associate, CW-5
3 was responsible for pricing the initial offers the Company would distribute to customers.
4 CW-5 stated that they were responsible for valuing any home that the AI algorithm could
5 not properly value. According to CW-5, management would label certain properties that
6 the AI algorithm could not value and would forward them to CW-5 for valuation. CW-5
7 maintains that the AI algorithm could not properly value approximately 50% of all the
8 properties that needed valuation.
9
10

11 144. In the same fashion, another former employee, CW-6, worked in a variety
12 of roles at Legacy Opendoor and Opendoor, from 2018 until November 2022. CW-6 began
13 work at Opendoor in Business Operations but later transitioned to Data Science
14 Operations, where CW-6 worked for the Consumer team and later the Price team. CW-6
15 stated that the AI algorithm's initial price valuation was reviewed by human price analysts
16 and portfolio managers. In their review of these prices set by the AI algorithm, CW-6
17 stated that the human price analysts and portfolio managers could change the initial offer
18 prices.
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21 145. More former employees corroborated the practice of changing the AI
22 algorithm's price after the Merger as well. CW-2, who worked as a Price Analyst for
23 Opendoor from July 2021 to July 2022 in Phoenix, Arizona, stated that they priced homes
24 in the southwestern region of the United States, including in Phoenix, Tucson, Prescott,
25 Los Angeles, San Bernadino County, San Diego, San Francisco, Sacramento, Portland,
26 Boise, Albuquerque, Las Vegas, and Reno. CW-2 stated that "the automated system was
27
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1 never accurate” and that “it had a lot of flaws. A lot.”

2 146. CW-2 further stated that Opendoor’s Pricing Analysts, including the
3 managers, did not trust the AI algorithm’s ability to determine accurate home pricing
4 offers. Signaling their discomfort with the AI algorithm’s shortcomings, CW-2 stated that
5 both of their managers, the Pricing Escalation Managers in the Western United States,
6 warned CW-2 and the other Pricing Analysts not to rely on the AI algorithm’s prices.
7

8 147. This practice was inculcated in Pricing Analysts from the start of their
9 employment with Opendoor. According to CW-2, the managers instructed them, “Don’t
10 look at what the system is coming in at.” This was done so that Pricing Analysts would
11 not be biased by the AI algorithm’s prices: “What the automated system gave out, don’t
12 anchor to it because it’s not going to be correct.” Instead, Pricing Analysts like CW-2 were
13 told to use their own personal judgment based on the data available. For instance, during
14 the early summer 2022, Pricing Analysts, including CW-2, were told to adjust home prices
15 in the Las Vegas, Nevada area market because the AI algorithm was significantly
16 overpricing properties there. CW-2 stated that in this instance, “[t]he automated system
17 offers were just insane offers that any seller would say yes, I’ll take it right away.”
18

19 148. In most instances, the AI-generated prices would be too high, so CW-2
20 would have to submit prices much lower. CW-2 stated that about 90% of the final price
21 offers they submitted for about 4,000 properties were priced under the AI algorithm price.
22 Sometimes, the AI algorithm would generate a pricing figure that would be much higher
23 than allowed under a certain market’s pricing cap, which required a Pricing Analyst, like
24 CW-2, to personally modify the price.
25
26
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1 149. In all, CW-2 maintained that Opendoor did not generally rely on the AI
2 algorithm to issue final priced offers on properties. Instead, the Company used human
3 Price Analysts to make these important decisions, just like any other traditional real estate
4 entity would. CW-2 stated that the only time when Opendoor fully used, or “turned on,”
5 the AI algorithm was when the Company faced a significant backlog of pricing, like when
6 more than one thousand homes needed a price quickly. According to CW-2, this was
7 generally done about three to four times a month to just “to help us clear out” the backlog
8 and the “majority (of final offers) were human-made offers.”
9
10

11 ***Individual Defendants Complete a Secondary Public Offering Which Further***
12 ***Deceives Investors***

13 150. On February 9, 2021, the Company completed a secondary public offering
14 (the “February 2021 Secondary Offering”). The February 2021 Secondary Offering sold
15 32,817,421 shares of Company common stock at an offering price of \$27.00 per share,
16 providing about \$886 million in gross proceeds for the Company. After underwriting fees
17 and discounts were deducted, the Company received about \$859.5 million in net proceeds
18 from the February 2021 Secondary Offering.
19
20

21 151. Unfortunately, as demonstrated through the success of the Merger and the
22 February 2021 Secondary Offering, investors and analysts wholeheartedly believed the
23 Individual Defendants that Opendoor’s AI algorithm made the Company unique and
24 strong in a crowded market. On August 2, 2021, InvestorPlace released an article titled,
25 “Opendoor Is a Real Estate Disruptor,” which heralded Opendoor’s AI algorithm, stating
26 the following:
27
28

1 One of the main reasons for Opendoor's success is its robust pricing
2 algorithm. It's not looking to buy at very low prices and sell at very high
3 prices, but instead seeks to identify the highest price that it can pay for a
4 home and still generate a profit. Because its competitors — Zillow
5 (NASDAQ:Z) and Offerpad — do not possess such pricing engines, they
6 have been forced to charge more than Opendoor for their homes to make the
7 same profit on them.

8 152. On August 12, 2021, Wedbush added Opendoor after it had "another strong
9 quarter" to the "Wedbush Best Ideas List" and stated in their analyst report that
10 Opendoor's "pricing capabilities let it optimize acquisition and resale across all market
11 conditions. Opendoor's pricing capabilities have been best in class, and we believe its vast
12 data is a significant asset."

13 153. On September 8, 2021, *Seeking Alpha* went even further, writing in an
14 article titled, "Opendoor: The Mythology of Disruption," that "Opendoor's pricing
15 algorithm, or AVM, is the secret sauce; the performant soul of iBuying." The article fully
16 backed Opendoor, stating that "Opendoor's [algorithm] is the best in the business – a first
17 of its kind machine-learning platform that actively ingests historical pricing information
18 alongside hundreds of datapoints per home, customized within each market to arrive at a
19 fair price."

20 ***Zillow Shuttles its Own iBuying Business***

21 154. On November 2, 2021, just less than two months after the *Seeking Alpha*
22 report praising Opendoor's AI algorithm, Zillow, Opendoor's largest competitor,
23 announced that it would shutter its iBuying business because it could not accurately
24 determine housing prices. Zillow's CEO stated in a press release that "***fundamentally, we***
25 ***have been unable to predict future pricing of homes to a level of accuracy that makes***
26
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1 *this a safe business to be in.*” (Emphasis added.) The market grew concerned over
2 Zillow’s announcement, with Opendoor’s common stock falling more than 14.5% the next
3 day following the news. Investors and analysts eagerly awaited Opendoor’s upcoming
4 earnings report for the third quarter of 2021 given Zillow’s demise.
5

6 155. The long-awaited news came just eight days later, on November 10, 2021.
7 During an earnings call that day, Defendant Wheeler unequivocally told investors that the
8 Company’s AI algorithm was “highly responsive” to macroeconomic conditions in the
9 housing market, stating that “Important is that our model really works in upmarkets, it’s
10 going to work in flat markets, it’s going to work in downmarkets.” Also on the call, when
11 asked a question about Opendoor’s pricing models, Defendant Wu responded that pricing
12 was “something that we treat [a]s proprietary and a large competitive mode that
13 compounds as we get to scale overtime. And so I would just say that since we started
14 Opendoor, this has been core and foundational to the business.”
15
16

17 156. Sadly, investors believed the Individual Defendants’ representations made
18 in the earnings call, boosting Opendoor’s price per share back up 15.5% the following
19 trading day, from a closing price of \$19.52 per share on November 10, 2021 to close at a
20 price of \$22.56 per share on November 11, 2021. Moreover, Oppenheimer, in an analyst
21 report published on November 11, 2021, described Opendoor as the industry’s leader,
22 raising its price “target to \$28 from \$25 after OPEN reported better 3Q21 results/Q4
23 outlook and is *clearly positioned to be the vertical leader in the transition of home*
24 *transacting online.*” (Emphasis added.)
25
26
27

28 157. Just five days later, on November 16, 2021, Defendant Wu, seizing the

1 opportunity, sold 1.6 million shares of Company stock, taking personal proceeds in excess
2 of \$35 million in a single day. On November 17, 2021, he sold another 628,348 shares,
3 taking personal proceeds in excess of \$13 million. On November 18, 2021, he unloaded
4 443,182 more shares, taking personal proceeds in excess of \$9 million. In all, in just a
5 three-day period and less than one week after Defendant Wheeler's false statements
6 assuring investors about Opendoor's AI algorithm, Defendant Wu made over \$57.6
7 million while the Company's stock traded at artificially inflated prices.
8

9
10 ***The FTC Investigation Brings the True Extent of Human Judgment and***
11 ***Fraudulent Repair Business Practices to Light***

12 158. On August 18, 2019, the FTC issued a Civil Investigative Demand ("CID")
13 to Legacy Opendoor as part of its non-public investigation into "whether [Opendoor] . . .
14 has deceptively marketed home-buying services in violation of Section 5 of the FTC Act,
15 15 U.S.C. § 45, and whether Commission action to obtain monetary relief would be in the
16 public interest." The CID asked for a response from Legacy Opendoor within 14 days. It
17 also contained interrogatories such as "Describe the Company's method for determining
18 what repairs it requires for the homes on which it had made an offer" and "Describe the
19 Company's method for calculating the repair costs deducted from the price of a home it
20 purchases." The CID also contained document requests including "Documents sufficient
21 to show each materially different version of the Company's policies regarding: (i)
22 calculating offers to purchase homes; . . . [and] (c) assessing repairs that the Company will
23 require homeowners to make or pay for as a condition of the Company purchasing their
24 homes." Lastly, the CID mandated that Legacy Opendoor "designate and make available
25
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1 one or more officers, directors, or managing agents, or others who consent, to testify on
2 its behalf” regarding “[t]he Company’s compliance with consumer protection laws and
3 policies, practices, and procedures concerning compliance.”
4

5 159. On December 23, 2020, the FTC told Opendoor that the FTC would pursue
6 an enforcement action against the Company if a settlement was not reached. Almost two
7 years later, on August 1, 2022, the FTC issued a press release that revealed the agency had
8 reached a settlement with Opendoor for \$62 million and would be releasing the FTC
9 Complaint to the public. The FTC Complaint revealed that for more than two years, dating
10 back to well before the Merger, the FTC investigated Legacy Opendoor (and following
11 the Merger, the Company) for use of fraudulent business practices, including the
12 implementation of exaggerated repair costs and extensive human input in the pricing of
13 the Company’s homes. Moreover, the FTC found that Opendoor’s prices were determined
14 by humans, and that one of the Company’s main performance metrics, contribution
15 margin, was the product of human judgment and, thus, did not come from any unique
16 strength of the Company’s “proprietary” AI algorithm. In relevant part, the FTC revealed
17 the following:
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19
20

21 The complaint alleges that Opendoor engaged in practices that both
22 increased the costs to customers and reduced offers to below market value.
23 Opendoor’s approach to home repairs is one example. The company told
24 prospective customers that after an in-person assessment of the property, it
25 may require them to make or pay for certain repairs. However, Opendoor
26 also said that it ‘ask[s] for the repairs we anticipate the next buyer of the
27 home will ask for’ – fixes that customers would have to address before a
28 traditional sale, too. Opendoor further claimed that consumers may even
save money on repairs if they sell to Opendoor because ‘we do our best to
pass wholesale savings on to you from our partnerships with local vendors.’

1 But according to the FTC, Opendoor's required repairs often cost thousands
2 more than what people would have to pay before a traditional sale.

3 160. Further, the FTC found that Opendoor had an internal practice of manually
4 changing prices that were generated by the AI algorithm. In particular, the FTC stated that
5 "Opendoor took various steps to reduce offers below what their internal valuation system
6 deemed to be a home's market value." Around August 2018, according to the FTC, the
7 Company started manually reducing home prices without telling customers, or investors,
8 the prices were less than market value. The FTC stated that Opendoor's AI algorithm
9 *could* generate offers, but that "[i]n many instances, *Opendoor's employees have*
10 *manually adjusted these values before presenting them to consumers as offers.*"
11 (Emphasis added.)
12

13
14 161. The FTC also determined that the Company completed "internal analyses"
15 on their employees' "manually adjusted" pricing, stating that "Opendoor's internal
16 analyses showed that these manually adjusted offers were several percentage points below
17 Opendoor's assessment of market value" and explained that "[b]eginning no later than
18 2019, Opendoor instituted a policy to reduce its manually adjusted offers to [redacted]
19 below what Opendoor assessed as market value."
20
21

22 162. Notably, the FTC even reviewed an "internal communication [which] stated
23 bluntly, 'We don't offer a fair market value to our customers.'"
24

25 163. On another front, the FTC found that Opendoor did business by issuing
26 fraudulent repair invoices to sellers and then did not make the repairs the Company stated
27 they would complete. The FTC revealed that "Opendoor has sent consumers a list of
28

1 required repairs with the cost it would charge consumers if they agree to deduct the costs
2 from their sales proceeds. *The list of repairs has been typically well beyond what*
3 *consumers would be responsible for in a market sale.*” (Emphasis added.) The FTC noted
4 that many of these repairs were not really needed, stating “Opendoor has routinely
5 requested upgrades to, or replacement of, functional heating and cooling systems, flooring,
6 and roofs. It has also frequently demanded cosmetic changes such as repainting and
7 replacement of items that could be repaired at far lower cost.”
8
9

10 164. Making matters worse for sellers, the FTC stated that Opendoor can take up
11 to eighteen days after the Company makes an initial offer to furnish a list of repairs to the
12 seller, thereby locking the seller in limbo since sellers had already paid deposits on their
13 new homes. According to the FTC, “Opendoor’s internal communications have described
14 the lag between the initial offer and the later, significantly lower offer as a *‘bait-and-*
15 *switch’ operation.*” (Emphasis added.)
16

17 165. The FTC also stated that the Company would keep the superfluous repair
18 money as surplus profit from the sale of the home, stating the following:
19

20 If the consumer decides to authorize Opendoor to complete the repairs and
21 deduct the estimated costs from the sale proceeds, Opendoor completes the
22 repairs after it acquires the property. *If the repairs cost less than the amount*
23 *deducted, Opendoor retains the excess as profit*, including the undisclosed
Estimated Repair Credit that Opendoor deducted from its original offer.

24 (Emphasis added).

25 166. Indeed, the FTC stated that “[o]ne internal study found that for [redacted]
26 of Opendoor’s purchases, its deductions for repair costs were greater than Opendoor’s
27 actual costs, thereby ‘taking away [redacted] of seller equity’ in each of those sales.”
28

1 167. The FTC additionally determined that Opendoor did business, and improved
2 contribution margin, by buying homes for low prices and selling them for significantly
3 higher prices. In relevant part, the FTC revealed the following:

4 Opendoor claimed that it did not make money from ‘buying low and selling
5 high,’ but from ‘charging a fee for [its] service.’ But gains from selling
6 homes for more than its offer price are a key contributor to its revenue. A
7 2019 financial analysis broke down revenue from Opendoor’s fee and from
8 ‘net resale gain’ and reported over [redacted] in resale gains in 2018 and
9 [redacted] in project resale gains in 2019. Presentations to investors touted
‘resale gain’ as a significant contributor to Opendoor’s revenue per home.

10 Data from Opendoor’s real estate transactions confirm that Opendoor makes
11 money not just from its fees, but also from buying homes low and selling
12 them high. After purchasing homes, it lists them on the open market for
13 resale. From 2016 through February 2020, Opendoor sold [redacted] percent
14 of its homes for more than what it offered consumers. The average gain on
these homes was [redacted], or [redacted] percent of the homes’ average
offer price of [redacted].

15 168. As part of the settlement agreement, Opendoor agreed to pay \$62 million to
16 the FTC. Samuel Levine, the Director of the FTC’s Bureau of Consumer Protection, stated
17 in the FTC’s press release accompanying the settlement that “Opendoor promised to
18 revolutionize the real estate market but built its business using old-fashioned deception
19 about how much consumers could earn from selling their homes on the platform. There is
20 nothing innovative about cheating consumers.”
21

22 169. The FTC’s August 2022 revelations show that Opendoor’s pricing was not
23 controlled by “proprietary, machine learning-based pricing models,” but was instead
24 controlled by human judgment and had been improperly adjusted based on fraudulent
25 consumer practices. Additionally, Opendoor did not generate margins from “the spread
26 between acquisition price and resale price,” but instead made “gains from selling homes
27
28

1 for more than its offer price” and these “gains...are a key contributor to its revenue.”

2 170. More former employees in the Securities Class Action corroborated the
3 FTC’s determinations that Opendoor lowballed prices to purchase homes from sellers by
4 generally charging sellers for repairs so that the Company could lower its final offer price
5 and then proceed to not make the repairs. Indeed, as the housing market shifted and
6 swayed throughout 2022, Opendoor’s AI algorithm struggled to respond; as a result,
7 Opendoor increased its fraudulent repair practices to maintain revenue, contribution
8 margin, and overall performance.
9
10

11 171. According to CW-4, who worked as an associate in the finance department
12 at Opendoor Home Loans from December 21, 2020 until November 3, 2022, Opendoor
13 changed how it conducted its repair policy at some point in 2020. CW-3, who worked as
14 a customer experience partner at Opendoor from March 2021 to November 2022, dealt
15 directly with customers and worked with them to obtain an offer from Opendoor. CW-3
16 stated that “We didn’t do every single repair we accounted for.”
17
18

19 172. Generally, customer experience partners such as CW-3 walked customers
20 through all steps of the Opendoor home-selling experience. Customer experience partners
21 would hold a Zoom interview with the customers, discuss the customer’s needs, conduct
22 a customer-guided video tour of the home (which was recorded), and dispatch a physical
23 team to actually visit the home to assess the area and the home’s exterior condition itself.
24 After conducting these assessments, Opendoor then made the customer an offer on their
25 house, which the Company would subtract repair costs from.
26
27

28 173. Importantly, customer experience representatives did not provide customers

1 with an itemized list of specific repairs and their corresponding individual costs, but
2 instead only verbally summarized the repair lists. CW-3 stated that this was done at the
3 request of managers but believed the managers were told to implement this practice by
4 their superiors.
5

6 174. CW-3 stated that Opendoor creates a list of repairs based upon what the
7 Company thinks the buyer would ask for, such as a new furnace or new air conditioning
8 unit. However, if the seller does not inquire about the repairs, or Opendoor does not
9 complete the repairs, Opendoor simply “pockets the money” whether the repairs are
10 completed or not.
11

12 175. CW-3 further explained that when they first started at Opendoor, repair costs
13 were much smaller, with an average repair price of around \$5,000. However, by the time
14 CW-3 left Opendoor in November 2022, the repair charges ballooned, reaching “\$15,000,
15 \$25,00, \$30,000, big numbers.”
16

17 176. Several of CW-3’s fellow co-workers also noticed the tremendous rise in
18 the price of repairs, with some exclaiming disbelief at the number of expensive repairs,
19 while others, including CW-3, challenged Opendoor’s home team who made the price list
20 “probably once or twice a day.”
21

22
23 ***Opendoor’s AI Algorithm is Unable to Adjust to Changes in the 2022***
24 ***Housing Market***

25 177. As a result of its reliance on human judgment in making price estimates,
26 Opendoor’s AI algorithm could not properly interpret, respond, or adjust to
27 macroeconomic changes in the housing market.
28

1 178. CW-4 maintained that by midway through 2021, during a Monthly Business
2 Review call, Company employees expressed concern over how long Opendoor's homes
3 were left on the market in some "problematic" states and noted that their prices were
4 falling. CW-4 worked in the Arizona region and was experiencing these issues, stating
5 that by the end of the 2022 Fiscal Year, homes in all of CW-4's markets were on the
6 market much longer than expected due to a stiff rise in interest rates, which the Company
7 had not anticipated.
8

9
10 179. Opendoor suffered from the same issues in central and southern California.
11 According to CW-1, who was charged with reviewing Opendoor's performance with more
12 than 100 homes in the San Francisco and Southern California markets, Opendoor "did not
13 know" the market and was overpricing its homes, thereby causing the Company to retain
14 them longer. CW-1 further stated that the reason Opendoor overpriced its properties was
15 due to the AI algorithm which was unable to respond to market changes. CW-1 even
16 expressed to Opendoor's General Manager of Reselling that changes should be made to
17 how the Company conducts its operations in the area, but the General Manager of
18 Reselling told CW-1 that "this is how Opendoor does it."
19
20

21 180. Importantly, the Individual Defendants were repeatedly made aware of this
22 issue at Company conferences and openly discussed it. For instance, CW-7, who worked
23 for Opendoor from November 2021 until September 2022 as a Senior Loan Officer, and
24 who had previously worked for one of Opendoor's competitors, RedDoor, from April
25 2021 to November 2021 (when Opendoor acquired RedDoor), stated that Opendoor
26 normally held company-wide video conferences, led by Defendants Wu and Wheeler, on
27
28

1 Zoom and Google. CW-7 maintains that Defendants Wu and Wheeler's attitudes changed
2 halfway through 2022 to "long faces." By July 2022, Defendant Wu and Wheeler told
3 employees that the Company had to "quickly unload" properties because inventory was
4 costing the Company too much. Defendant Wheeler, according to CW-7, went as far as to
5 say that "*We'll take anything right now*," meaning that Opendoor would take any home
6 offer they could find in order to unload excess inventory. (Emphasis added.)
7

8 181. CW-8 corroborated CW-7, stating that sometime in July or August 2022,
9 during a company-wide conference call, Defendant Wheeler told Company employees
10 that Opendoor's focus was to "to lower the DIP," which stood for "Days In Possession."
11 After this call, CW-8 stated that Defendant Wheeler and others at the Company began
12 changing models so that Opendoor could unload inventory faster.
13
14

15 182. On the same note, CW-3 remembered a meeting that occurred halfway
16 through 2022, during which it was made clear by Opendoor leaders that "the longer we
17 held the inventory, the more money we lost, and less profit we made when we could turn
18 around and sell those homes again."
19

20 183. CW-7 also stated that during an August 2022 video conference call,
21 Defendant Wheeler instructed employees to give credits and other incentives to "outside
22 assets," which included real estate agents and home mortgage companies to further unload
23 inventory. CW-7 personally worked on several of these incentive-sweetened deals, which
24 featured additional percentages given to outside brokers who identified home buyers, that
25 ended in sale, \$2,000 lender credit, and free appraisals, among other things.
26
27
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1 184. CW-1 saw these concessions made with the help of outside brokers in
2 practice as well. CW-1 stated that, for inventory sitting in the San Francisco area for long
3 periods of time, the Company enlisted outside brokers to personally list and sell the
4 properties with enhanced photos and better descriptions. CW-1 stated that this practice
5 would cost Opendoor a 2% fee.
6

7 185. Opendoor's inventory issues extended through September 2022. At that
8 time, according to CW-7, Defendant Wu and Wheeler held a video conference with
9 employees during which Defendant Wheeler admitted "seeing depreciated assets" with
10 high inventory and to "move the properties." CW-7 stated that some who attended the call
11 expressed concern that the Company was paying too much for the houses it was buying
12 and was not completing repairs.
13
14

15 **False and Misleading Statements**

16 ***November 30, 2020 Merger Proxy Statement***

17 186. On November 30, 2020, the Company filed the Merger Proxy Statement
18 with the SEC in connection with the Merger. The Merger Proxy Statement was solicited
19 by Defendants Palihapitiya, Osborne, Spillane, Wu, Wheeler, Bain, Herman, Jaffe, Keffer,
20 Kilar, and Solomon pursuant to Section 14(a) of the Exchange Act. Defendants
21 Palihapitiya, Osborne, Spillane, Wu, Bain, Herman, and Solomon also signed the Merger
22 Proxy Statement, which contained materially misleading elements.
23
24

25 187. The Merger Proxy Statement requested Company shareholders to vote to,
26 *inter alia*: (1) approve the Merger; (2) approve four separate proposals to make material
27 differences between SCH's Amended and Restated Memorandum and Articles of
28

1 Association (as may be amended from time to time, the “Cayman Constitutional
2 Documents”) and the proposed certificate of incorporation and bylaws of Opendoor
3 Technologies (collectively, the “Organizational Documents Proposals”); (3) elect
4 Defendants Wu, Keffer, Solomon, Kilar, Jaffe, and Herman as directors; (4) approve a
5 proposal for the PIPE financing; (5) approve a proposal to adopt the Incentive Plan; and
6 (6) approve and adopt Opendoor Technologies Inc. 2020 Employee Stock Purchase Plan
7 (the “Employee Stock Plan”) (collectively, the “Merger Proposals”).
8
9

10 188. The purpose of the Incentive Plan was to “enhance [the Company’s] ability
11 to attract, retain and motivate persons who make (or are expected to make) important
12 contributions by providing these individuals with equity ownership opportunities and/or
13 equity-linked compensatory opportunities.” If approved by shareholders, the Incentive
14 Plan would have allowed for approximately 43.5 million shares of post-Merger Company
15 stock to be available for issuance as compensation to the Company’s officers and
16 directors, including various of the Individual Defendants.¹¹
17
18
19

20 ¹¹ The Merger Proxy Statement notes that “[t]he aggregate number of shares of our
21 common stock that will be available for issuance under the [Incentive] Plan will be
22 equal to the sum of (i) 43,508,048 shares (8% of the total number of issued and
23 outstanding shares of Opendoor [] common stock as of immediately after the Closing)
24 of Opendoor [] common stock and (ii) an annual increase on the first day of each
25 calendar year beginning January 1, 2022 and ending on and including January 1, 2030
26 equal to the lesser of (A) a number equal to the excess (if any) of (1) 5% of the
27 aggregate number of shares of Opendoor [] common stock outstanding on the final day
28 of the immediately preceding calendar year over (2) the number of shares of Opendoor
[] common stock then reserved for issuance under the [Incentive] Plan as of such date
and (B) such smaller number of shares of Opendoor [] common stock as is determined
by our board.”

1 189. Pursuant to the Incentive Plan, awards may be granted until the tenth
2 anniversary of the Incentive Plan's effective date, which is September 15, 2033, unless
3 either the Board or one of the committees it delegates terminates the Incentive Plan before
4 then. Further, the Incentive Plan includes an annual limit for each non-employee director's
5 total compensation. Under the Incentive Plan, the grant date fair value of shares of
6 common stock subject to any award granted to a non-employee director in any calendar
7 year may not exceed \$1,000,000. The Company's officers and directors have received and
8 continue to receive lucrative compensation, while numerous of them made false and
9 misleading statements, during and after the solicitation of the Merger Proxy Statement.
10 These officers and directors would not have received this lucrative compensation pursuant
11 to the Incentive Plan had certain of them made false and misleading statements in the
12 Merger Proxy Statement, as the shareholders would not have approved the Merger, and
13 thus, the Incentive Plan, had they known the truth about Opendoor. In total to date, the
14 Company has paid over \$659 million (detailed in the chart below) to its officers and
15 directors pursuant to the Incentive Plan as a result of shareholders approving the Incentive
16 Plan under false pretenses.
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**AMOUNTS RECEIVED UNDER THE OPENDOOR TECHNOLOGIES INC.
2020 INCENTIVE PLAN¹²**

Individual	2020	2021¹³	2022	Subtotals
John Rice , defendant, Director	-	\$584,201	\$165,552	\$749,753
Carrie Wheeler , defendant, CEO/former CFO/ Director	\$50,060,723	-	-	\$50,060,723
Christina Schwartz , non-party, Interim CFO/ Chief Accounting Officer ("CAO")	-	-	\$1,826,185	\$1,826,185
Eric Wu , defendant, former CEO/ President, Marketplace/Director	\$370,051,408	\$111,598,143	-	\$481,649,551
Sydney Schaub , non- party, Chief Legal Officer ("CLO")	-	-	\$4,379,219	\$4,379,219
Andrew Low Ah Kee , non-party, former President	-	\$112,546,679	-	\$112,546,679
Elizabeth Stevens , non- party, former Head of Legal	-	\$5,643,000	-	\$5,643,000
Adam Bain , Defendant, Director	-	\$282,986	\$165,899	\$448,885

¹² Includes amounts received under the Plan by the Individual Defendants and other individuals at the Company between December 17, 2020, the date that shareholders approved the Plan, to the present, rounded to the nearest whole dollar as appropriate.

¹³ Amounts in this column for John Rice, Adam Bain, Cipora Herman, Jonathan Jaffe, Pueo Keffer, Jason Kilar, and Glenn Solomon include compensation for the 2021 Fiscal Year and pro rata compensation for the period from the completion of the Merger until the end of the 2020 Fiscal Year.

Cipora Herman, Defendant, Director	-	\$636,877	\$165,970	\$802,847
Jonathan Jaffe, Defendant, Director	-	\$206,622	\$163,986	\$370,608
Pueo Keffer, Defendant, Director	-	\$274,421	\$165,695	\$440,116
Jason Kilar, Defendant, Director	-	\$274,421	\$165,695	\$440,116
Glenn Solomon, Defendant, Director	-	\$280,077	\$165,827	\$445,904
			TOTAL	\$659,803,586

190. The Merger Proxy Statement represented that Legacy Opendoor had algorithms that accurately priced residential real estate, stating the following, in relevant part:

Pricing accuracy. Our unique data works in concert with our pricing algorithms. These algorithms use machine learning to drive pricing decisions through demand forecasting, outlier detection, risk pricing, and inventory management. Over time, we have improved the pricing accuracy of our models as we add new data inputs and refine model logic, improvements that compound with experience and scale. As we have continued to demonstrate improving accuracy, we have also been able to increase our number of fully automated home valuations.

Advancements in model sophistication have accelerated our feedback loops, such that our systems can dynamically adjust to leading market indicators and react to real-time macro- and micro-economic conditions. Our pricing algorithms are designed to dynamically adjust to leading indicators and market conditions so that the business can react to real-time economic conditions. This responsiveness is critical to pricing accurately and maintaining margins, especially in periods of volatility.

191. The Merger Proxy Statement also represented that the following reasons

1 supported SCH's board of directors' decision to enter the Merger Agreement and
2 recommend the Merger with Legacy Opendoor:

3 **Opendoor's Superior Consumer Experience and Growing Customer**

4 **Base.** The digital experience created by Opendoor's product is
5 transforming a highly inefficient process. Today, 89% of home buyers and
6 sellers use an agent and the process for buying and selling a single-family
7 home is complex, uncertain, time-consuming and offline. Opendoor's
8 platform introduces greater simplicity (pursuant to its integrated digital
9 experience), safety (transactions using Opendoor are contactless and do not
10 require the seller to host open houses or in-person visits from multiple
11 potential buyers), certainty and speed (with flexible closings in little as
12 14 days, compared with an average of 87 days to close in a traditional sale).
13 As a result, customers enjoy selling their homes through Opendoor (based
14 on Net Promoter Scores). Further, given the approximately 72 million,
15 digitally-native millennials that are beginning to start families and enter the
16 housing market, the SCH board of directors expects that customer demand
17 for Opendoor's product will continue to increase.

18 **Opendoor's Efficient and Scalable Business Model.** Opendoor has a
19 highly efficient platform to buy and sell real estate. Opendoor applies
20 technology to reduce costs through centralization and automation and is able
21 to achieve economies of scale not available to traditional agents, creating
22 savings that can be passed along to Opendoor's customers. The more
23 transactions Opendoor completes, the more refined and cost-efficient its
24 products are expected to become, which the SCH board of directors expects
25 to, in turn, continue to increase customer demand while also increasing
26 Opendoor's margins.

27 **Opendoor's Rapid Growth and Expansive Future**
28 **Opportunities.**

Opendoor is already a leader in the ability to buy and sell
a consumer home online and has a demonstrated ability to grow rapidly and
efficiently through its centralized customer operations, scalable pricing
systems and small, efficient in-market launch teams. Opendoor also
anticipates continued revenue growth and margin improvement through
market penetration and adjacent services. Today, Opendoor operates in 21
U.S. markets with plans for future expansion into additional markets across
the country. In terms of adjacent services, Opendoor has already launched
title insurance and escrow services and certain financing services, and plans
to launch additional value-added services in the future which the SCH board
of directors expects will increase contribution margin and profits over time.

1 192. The statements in ¶¶ 190-191 above were materially false and misleading
2 and failed to disclose the facts necessary to make the statements made not materially false
3 and misleading. Specifically, they failed to disclose that: (1) Legacy Opendoor's pricing
4 algorithm posed a significant risk to the Company, as the algorithm was not automated
5 but rather required human intervention and was therefore unable to timely respond to
6 macroeconomic changes in the housing market; and (2) Legacy Opendoor was engaged
7 in fraudulent consumer practices, including overcharging its customers for home repairs
8 that the company thereafter failed to perform. As a result of the foregoing, the Company's
9 public statements were materially false and misleading at all relevant times.
10

11
12 193. Regarding the due diligence the SCH board took with respect to
13 investigating Legacy Opendoor prior to the completion of the Merger, the Merger Proxy
14 Statement also represented the following:
15

16 In analyzing the Business Combination, the SCH board of directors and
17 management conducted due diligence on Opendoor. The SCH board of
18 directors reviewed comparisons of selected financial data of Opendoor with
19 its peers in the industry and the financial terms set forth in the Merger
20 Agreement, and concluded that the Business Combination was in the best
interest of SCH's shareholders.

21 194. Under the section titled "Results of Due Diligence," the Merger Proxy
22 Statement stated that "the SCH board of directors considered the scope of the due diligence
23 investigation conducted by SCH's senior management and outside advisors and evaluated
24 the results thereof and information available to it related to Opendoor" including:
25

26 (a) extensive virtual meetings and calls with Opendoor's management
27 team regarding its operations, projections and the proposed transaction;
28 and

1 (b) review of materials related to Opendoor and its business, made
2 available by Opendoor, including financial statements, material contracts,
3 key metrics and performance indicators, benefit plans, employee
4 compensation and labor matters, intellectual property matters, real property
5 matters, information technology, privacy and personal data, litigation
6 information, environmental matters and other regulatory and compliance
7 matters and other legal and business diligence.

8 195. The statements referenced in ¶¶ 193-194 above were materially false and
9 misleading because SCH misrepresented its due diligence efforts of Legacy Opendoor by
10 exaggerating that it had conducted proper due diligence of Legacy Opendoor prior to
11 completion of the Merger. In reality, Legacy Opendoor was a company without an
12 industry-altering AI home pricing algorithm that could boost contribution margins in any
13 housing market conditions. Instead, Legacy Opendoor relied upon human judgment in
14 pricing homes, just like any other real estate business. Making matters worse, Legacy
15 Opendoor also engaged in fraudulent business practices such as charging customers for
16 repairs that the Company never completed, all in an effort to mask lost profits which
17 resulted from the poor performance of the Company's algorithm and artificially inflate its
18 contribution margin .

19 196. The Merger Proxy Statement also misrepresented the value of SCH shares
20 leading up to the Merger by representing that each SCH share was worth \$10.00. The
21 Merger Proxy Statement represented to investors that the aggregate value of the
22 consideration to be paid by SCH in the Merger was approximately \$5 billion through the
23 issuance of approximately 560,005,000 shares of "New Opendoor" common stock issued
24 by SCH valued at \$10.00 per share. In particular, the Merger Proxy Statement provided
25 the following consideration calculation that valued each SCH share at \$10.00:
26
27
28

1 As a result of and upon the closing of the Merger (the “Closing”), among
2 other things, all outstanding shares of Opendoor common stock (after giving
3 effect to Opendoor Preferred Conversion, Opendoor Warrant Settlement and
4 the Convertible Note Exchange , as more fully described elsewhere in this
5 proxy statement/prospectus) as of immediately prior to the effective time of
6 the Merger and, together with shares of Opendoor common stock reserved
7 in respect of Opendoor Awards outstanding as of immediately prior to the
8 Closing that will be converted into awards based on Opendoor Technologies
9 common stock, as more fully described elsewhere in this proxy
10 statement/prospectus, will be cancelled in exchange for the right to receive,
11 or the reservation of, an aggregate of 500,000,000 shares of Opendoor
12 Technologies common stock (at a deemed value of \$10.00 per share), which,
13 in the case of Opendoor Awards, will be shares underlying awards based on
14 Opendoor Technologies common stock representing a pre-transaction
15 equity value of Opendoor of \$5.0 billion (the “Aggregate Merger
16 Consideration”). The portion of the Aggregate Merger Consideration
17 reflecting the conversion of the Opendoor Awards is calculated assuming
18 that all Opendoor Technologies Options are net-settled (although Opendoor
19 Technologies Options may by their terms be cash-settled, resulting in
20 additional dilution). The Aggregate Merger Consideration does not take into
21 account certain additional issuances (i) to the Opendoor PIPE Investors
22 pursuant to the PIPE Investment which may be made under the terms of the
23 respective Subscription Agreements or (ii) to Opendoor management and
24 employees pursuant to the 2020 Incentive Plan and Management Awards
25 (as defined in the Incentive Award Plan Proposal).

197. The Merger Proxy Statement also described certain SCH related party
transactions concerning the Founder Shares and Private Placement Warrants, stating the
following, in relevant part:

Founder Shares

23 In January 2020, the Sponsor purchased 8,625,000 SCH Class B ordinary
24 shares for an aggregate purchase price of \$25,000, or approximately \$0.003
25 per share (after a subsequent share capitalization on April 27, 2020) (the
26 “founder shares”). In March 2020, the Sponsor transferred 100,000 founder
27 shares to each of David Spillane and Cipora Herman (two of SCH’s
28 independent directors) at their original per-share purchase price. On
April 27, 2020, SCH effected a pro rata share capitalization resulting in an
increase in the total number of founder shares outstanding from 8,625,000
to 10,350,000 in order to maintain the ownership of founder shares at 20%

1 of the issued and outstanding ordinary shares of SCH upon consummation
2 of its initial public offering. The Sponsor received 1,725,000 founder shares
3 in the share capitalization as a result of our independent directors waiving
4 their right to receive shares in the share capitalization.

4 ***Private Placement Warrants***

5 Simultaneously with the consummation of the initial public offering of SCH,
6 the Sponsor purchased 6,133,333 warrants to purchase one SCH Class A
7 ordinary share at an exercise price of \$11.50 (the “private placement
8 warrants”) at a price of \$1.50 per warrant, or \$9.2 million in the aggregate,
9 in a private placement. Each private placement warrant entitles the holder to
10 purchase one SCH Class A ordinary share for \$11.50 per share. A portion
11 of the proceeds from the sale of the private placement warrants was placed
12 in the trust account of SCH. The private placement warrants may not be
13 redeemed by us so long as they are held by the Sponsor or its permitted
14 transferees. If the private placement warrants are held by holders other than
15 the Sponsor or its permitted transferees, the private placement warrants will
16 be redeemable by us and exercisable by the holders on the same basis as the
17 warrants included in the units that were sold as part of the initial public
18 offering of SCH. The Sponsor, or its permitted transferees, has the option to
19 exercise the private placement warrants on a cashless basis.

16 198. The statements referenced in ¶¶ 196-197 above were materially false and
17 misleading because SCH failed to disclose that the entire SCH board had deep financial
18 ties to the Founder Shares. Even Defendants Herman and Spillane, whom SCH
19 represented to be independent directors, each held 100,000 Founder Shares, which would
20 net each of them \$1,000,000 if the Merger was successfully effectuated before SCH’s
21 deadline to effectuate a business combination. Because SCH’s board consisted entirely of
22 directors who had conflicts of interest relating to the Founder Shares, SCH’s board could
23 not form a special committee consisting of truly disinterested and independent directors
24 to evaluate the fairness of the Merger.

1 199. The Merger Proxy Statement explicitly maintained that SCH's board
2 unanimously supported the Merger and found that the transactions solicited in the Merger
3 Proxy Statement were in "the best interests" of SCH and its stockholders. The SCH board
4 unabashedly recommended that shareholders approve the transactions contemplated in the
5 Merger Proxy Statement.
6

7 200. The misrepresentations and omissions set forth herein were material to
8 shareholders in voting on the Merger Proposals who would not have approved the Merger
9 Proposals had they been informed about the Overpayment Misconduct and the true state
10 of affairs at the Company and Legacy Opendoor.
11

12 201. Due to the false and misleading elements of the Merger Proxy Statement,
13 Company shareholders voted to: (i) approve the Merger; (ii) elect Defendants Wu, Keffer,
14 Solomon, Kilar, Jaffe, and Herman to Opendoor's Board, allowing them to make false and
15 misleading statements; (iii) approve the NYSE Proposal; and (iv) approve the Incentive
16 Plan, which thereafter allowed various of the Individual Defendants to materially benefit
17 from the false and misleading statements contained in the Merger Proxy Statement.
18

19 202. Given the lack of appropriate and accurate disclosures in the Merger Proxy
20 Statement, SCH shareholders were unable to evaluate what they would receive in
21 connection with any investment in the post-Merger Company. As many would come to
22 know, those that failed to redeem their shares were duped into investing in a Company
23 with little to no value.
24
25

26
27 ***December 21, 2020 Registration Statement***

28 203. On December 21, 2020, before the market opened on the first day of

1 Opendoor public trading, Opendoor filed a registration statement on Form S-1 with the
2 SEC (the “Registration Statement”), which was signed by Defendants Wu, Wheeler, Bain,
3 Herman, Keffer, Solomon, Kilar, and Jaffe. The Registration Statement stated that
4 Opendoor’s “algorithms use machine learning to drive pricing decisions through demand
5 forecasting, outlier detection, risk pricing, and inventory management” and that the
6 Company’s “*pricing algorithms are designed to dynamically adjust to leading indicators
7 and market conditions so that the business can react to real-time economic conditions.*”
8 (Emphasis added.)
9
10

11 204. The Registration Statement also stated that Opendoor’s pricing algorithm
12 was the driver of Opendoor’s profitability, noting that its “proprietary, machine learning-
13 based pricing models are key to our ability to acquire and resell thousands of homes per
14 month accurately, profitably, and with increasing levels of automation.”
15

16 205. The Registration Statement also stated the following regarding Opendoor’s
17 AI algorithm:
18

19 Proprietary offline data. We have conducted over 150,000 home
20 assessments during which we collect over 100 data points on each home and
21 its surroundings. We have invested in building custom inspection and
22 operator tooling to systematically source and translate home features into a
23 robust data library. Once we have purchased a home, we can collect
24 additional proprietary home-level data through visitor feedback, visitor
25 traffic and duration of visits. These proprietary data points have led us to
26 make over one billion annotations and corrections to Multiple Listing
27 Services (“MLS”) and tax assessor data, as well as build out new, non-
28 traditional geospatial data assets, such as power line proximity and road
noise level. The additional home level data we collect from local vendors
provides structured feedback on each home and further strengthens our data
moat. Pricing accuracy. Our unique data works in concert with our pricing
algorithms. These algorithms use machine learning to drive pricing
decisions through demand forecasting, outlier detection, risk pricing, and

1 inventory management. Over time, we have improved the pricing accuracy
2 of our models as we add new data inputs and refine model logic,
3 improvements that compound with experience and scale. As we have
4 continued to demonstrate improving accuracy, we have also been able to
5 increase our number of fully automated home valuations.

6 Advancements in model sophistication have accelerated our feedback loops,
7 such that our systems can dynamically adjust to leading market indicators
8 and react to real-time macro- and micro-economic conditions. Our pricing
9 algorithms are designed to dynamically adjust to leading indicators and
10 market conditions so that the business can react to real-time economic
11 conditions. This responsiveness is critical to pricing accurately and
12 maintaining margins, especially in periods of volatility.

13 206. The Registration Statement also discussed the importance of the Company's
14 proprietary technology to the Company's ability to generate revenue, stating the
15 following:

16 In order to finalize our offer, we conduct a free assessment to confirm all of
17 the home details and identify any repairs that may need to be performed. We
18 have developed purpose-built software to guide home assessment
19 workflows and collect over 100 unique data points regarding a home's
20 condition and quality, which we incorporate as structured data into our
21 underlying pricing models. Once completed, we finalize our offer, taking
22 into consideration any necessary repairs, and produce the purchase
23 agreement for the seller. Our objective is to provide a competitive cash offer
24 to sellers and we believe this approach builds trust with our potential
25 customers. Our business model is designed to generate margins from our
26 service charge to sellers and ancillary products and services associated with
27 a transaction, and not from the spread between acquisition price and resale
28 price.

February 4, 2021 Registration Statement and February 8, 2021 Prospectus

29 207. On February 4, 2021, in connection with the February 2021 Secondary
30 Offering, the Company filed a registration statement on Form S-1 with the SEC (the
31 "February 2021 Registration Statement") which became effective on February 4, 2021.
32 Four days later, on February 8, 2021, the Company filed a prospectus on Form 424B4

1 with the SEC (the “February 2021 Prospectus”) (collectively, with the February 2021
2 Registration Statement, the “February 2021 Offering Documents”). Defendants Wu,
3 Wheeler, Bain, Herman, Jaffe, Keffer, Kilar, and Solomon signed the February 2021
4 Offering Documents. The February 2021 Offering Documents again represented that
5 Opendoor’s pricing algorithm was the driver of Opendoor’s profitability and that it was
6 able to react to real-time economic conditions, stating the following, in relevant part:
7

8 Pricing Accuracy. Our unique data works in concert with our pricing
9 algorithms. These algorithms use machine learning to drive pricing
10 decisions through demand forecasting, outlier detection, risk pricing, and
11 inventory management. Over time, we have improved the pricing accuracy
12 of our models as we add new data inputs and refine model logic,
13 improvements that compound with experience and scale. As we have
14 continued to demonstrate improving accuracy, we have also been able to
15 increase our number of fully automated home valuations.

16 Advancements in model sophistication have accelerated our feedback loops,
17 such that our systems can dynamically adjust to leading market indicators
18 and react to real-time macro- and microeconomic conditions. Our pricing
19 algorithms are designed to dynamically adjust to leading indicators and
20 market conditions so that the business can react to real-time economic
21 conditions. This responsiveness is critical to pricing accurately and
22 maintaining margins, especially in periods of volatility.

23 208. The February 2021 Offering Documents further stated the following about
24 Opendoor’s algorithm and its importance to Opendoor’s ability to generate profits:

25 Pricing accuracy and automation. We have invested significant engineering,
26 data science, and operations resources in our pricing infrastructure. Our
27 proprietary, machine learning-based pricing models are key to our ability to
28 acquire and resell thousands of homes per month accurately, profitably, and
with increasing levels of automation. Based on our historical results, we
believe pricing performance will continue to improve with operating
experience and scale.

29 209. The February 2021 Offering Documents also stated the following about

1 Opendoor's overall business model and the importance of "necessary repairs" to
2 properties:

3 In order to finalize our offer, we conduct a free assessment to confirm all of
4 the home details and identify any repairs that may need to be performed. We
5 have developed purpose-built software to guide home assessment
6 workflows and collect over 100 unique data points regarding a home's
7 condition and quality, which we incorporate as structured data into our
8 underlying pricing models. Once completed, we finalize our offer, taking
9 into consideration any necessary repairs, and produce the purchase
10 agreement for the seller. Our objective is to provide a competitive cash offer
11 to sellers and we believe this approach builds trust with our potential
12 customers. Our business model is designed to generate margins from our
13 service charge to sellers and ancillary products and services associated with
14 a transaction, and not from the spread between acquisition price and resale
15 price.

12 ***March 4, 2021 Form 10-K***

13
14 210. On March 4, 2021, the Company filed its annual report for the 2020 Fiscal
15 Year on Form 10-K with the SEC (the "2020 10-K"). The 2020 10-K was signed by
16 Defendants Wu, Wheeler, Bain, Herman, Keffer, Solomon, Kilar, and Jaffe and contained
17 certifications, signed by Defendants Wu and Wheeler, pursuant to Rules 13a-14(a) and
18 15d-14(a) promulgated under the Exchange Act and the Sarbanes-Oxley Act of 2002
19 ("SOX") attesting to the accuracy of the financial statements contained in the 2020 10-K,
20 the disclosure of any material changes to the Company's internal controls, and the
21 disclosure of any fraud committed by the Company, its officers, or its directors.
22

23
24 211. The 2020 10-K stated the following regarding Opendoor's AI algorithm's
25 capabilities to respond to variable housing market conditions:

26
27 Pricing accuracy. Our unique data works in concert with our pricing
28 algorithms. These algorithms use machine learning to drive pricing
decisions through demand forecasting, outlier detection, risk pricing, and

1 inventory management. Over time, we have improved the pricing accuracy
2 of our models as we add new data inputs and refine model logic,
3 improvements that compound with experience and scale. As we have
4 continued to demonstrate improving accuracy, we have also been able to
5 increase our number of fully automated home valuations.

6 Advancements in model sophistication have accelerated our feedback loops,
7 such that our systems can dynamically adjust to leading market indicators
8 and react to real-time macro- and micro-economic conditions. Our pricing
9 algorithms are designed to dynamically adjust to leading indicators and
10 market conditions so that the business can react to real-time economic
11 conditions. This responsiveness is critical to pricing accurately and
12 maintaining margins, especially in periods of volatility.

13 212. The 2020 10-K also discussed the importance of the Company's proprietary
14 technology to the Company's ability to generate revenue:

15 In order to finalize our offer, we conduct a free assessment to confirm all of
16 the home details and identify any repairs that may need to be performed. We
17 have developed purpose-built software to guide home assessment
18 workflows and collect over 100 unique data points regarding a home's
19 condition and quality, which we incorporate as structured data into our
20 underlying pricing models. Once completed, we finalize our offer, taking
21 into consideration any necessary repairs, and produce the purchase
22 agreement for the seller. Our objective is to provide a competitive cash offer
23 to sellers and we believe this approach builds trust with our potential
24 customers. Our business model is designed to generate margins from our
25 service charge to sellers and adjacent products and services associated with
26 a transaction, and not from the spread between acquisition price and resale
27 price.

28 ***April 30, 2021 Proxy Statement***

29 213. On April 30, 2021, the Company filed its Schedule 14A (the "2021 Proxy
30 Statement") with the SEC. Defendants Wu, Bain, Herman, Jaffe, Keffer, Kilar, and
31 Solomon solicited the 2021 Proxy Statement filed pursuant to Section 14(a) of the
32 Exchange Act, which contained material misstatements and omissions.

33 214. The 2021 Proxy Statement called for Company shareholders, *inter alia*, to:

1 (1) elect Defendants Herman, Jaffe, and Solomon to the Board; (2) ratify Deloitte &
2 Touche LLP as the Company's independent auditor for the 2021 Fiscal Year; and (3) hold
3 an advisory vote on executive compensation.

4
5 215. Regarding the Company's Code of Conduct, the 2021 Proxy Statement
6 stated, in relevant part:

7 The Board has adopted a written code of business conduct and ethics (the
8 "Code of Conduct"), which applies to all of our employees, officers and
9 directors. Our Code of Conduct is available in the "Corporate Governance"
10 section of our website at investor.opendoor.com. In addition, we intend to
11 post on our website all disclosures that are required by law or the Nasdaq
12 listing rules concerning any amendments to, or waivers from, any provision
13 of our Code of Conduct.

14 216. Regarding the Board's "Role in Risk Oversight," the 2021 Proxy Statement
15 provided, in relevant part:

16 The Board recognizes that the achievement of our strategic and commercial
17 objectives involves taking risks and that those risks may evolve over time.
18 The Board has oversight responsibility for Opendoor's risk management
19 function, which is designed to identify, assess and monitor fundamental
20 financial and business risks across the Company's operations and consider
21 ways to address and mitigate those risks. Consistent with this approach, one
22 of the Board's primary responsibilities includes reviewing assessments of,
23 and advising management with respect to, significant risks and issues facing
24 the Company, including risks related to the ongoing COVID-19 pandemic.

25 217. Defendants Wu, Bain, Herman, Jaffe, Keffer, Kilar, and Solomon caused
26 the 2021 Proxy Statement to be false and misleading by failing to disclose, *inter alia*,
27 that: (1) Legacy Opendoor did not have a fully automated AI-powered algorithm; (2) as
28 a result, Legacy Opendoor relied on human judgment to assess pricing trends and was,
therefore, not as reliable or as high-quality of an operation as Defendants represented; (3)
due to the foregoing, the post-Merger Company was susceptible to changing market

1 conditions just like its main competitor, Zillow; (4) the Company engaged in the
2 Overpayment Misconduct; (5) Legacy Opendoor (and following the Merger, the
3 Company) engaged in fraudulent business practices including charging customers for
4 fake repairs to bolster profits; (6) Opendoor's contribution margins were susceptible to
5 falling into the negatives; and (7) in light of the foregoing, Opendoor's financial
6 projections were impossible to attain and patently unrealistic. As a result of the foregoing,
7 the Company's public statements were materially false and misleading at all relevant
8 times.
9
10

11 218. The 2021 Proxy Statement was also false and misleading because, despite
12 assertions to the contrary, the Company's Code of Conduct was not followed, as the
13 Individual Defendants violated the Code of Conduct, including by allowing false and
14 misleading statements to be issued to the investing public. The 2021 Proxy Statement was
15 also false and misleading because, despite assertions to the contrary, the Individual
16 Defendants disregarded their role in risk oversight.
17
18

19 219. As a result of Defendants Wu, Bain, Herman, Jaffe, Keffer, Kilar, and
20 Solomon causing the 2021 Proxy Statement to be false and misleading, Company
21 shareholders voted, *inter alia*, to: (1) reelect Defendants Herman, Jaffe, and Solomon to
22 the Board, allowing them to continue to make false and misleading statements; (2) approve
23 named executive officer compensation on an advisory, non-binding basis; and (3) ratify
24 Deloitte & Touche LLP as the Company's independent registered public accounting firm
25 for the 2021 Fiscal Year.
26
27

28 ***November 10, 2021 Press Release***

1 220. On November 10, 2021, the Company issued a press release that announced
2 Opendoor's third quarter of 2021 financial performance. The press release stated, among
3 other things, that Opendoor's contribution margin for the third quarter of 2021 was 7.5%,
4 which was significantly lower than the Company's second quarter of 2021 contribution
5 margin of 10.8%.
6

7 ***November 10, 2021 Earnings Call***

8 221. On November 10, 2021, Opendoor held an earnings call with investors and
9 analysts to discuss the Company's third quarter of 2021 financial performance. The
10 earnings call was held just one week after Zillow announced that it would cease its iBuying
11 business, Zillow Offers, because the company's home pricing algorithm could not
12 accurately predict housing prices. During the call, an analyst from Citi, Nicholas Jones,
13 asked Defendant Wheeler, "One, can you touch on housing pricing volatility and how you
14 feel your model is kind of positioned to withstand that, and kind of detected given some
15 of the turnover. And then if let's say, prices you could press a little bit, how much
16 contribution margin compression can we expect and how much can the kind of model
17 withstand given some of the other kind of headlines and outline over the last two weeks?
18 Thanks." Defendant Wheeler responded:
19
20
21
22

23 Hey, Nick. Embedding your question is how do we price for homes and how
24 do we think about forecasting. A couple of comments; one, we're very good
25 at this. This is core to what we do. We have built over the last seven years,
26 very robust pricing systems. We have seven years of investment in the data,
27 in the modeling and in our team that allows us continuously improve how
28 we model and approach home price valuations. We operate our business
with a tight discipline.

As Eric said, *we are rigorously back testing our models every day. They're*

1 *highly responsive. They have fast feedback loops and we can react to*
 2 *changing market conditions. Our forecasting accuracy was what allows*
 3 *us to manage the business within a reasonable range of outcomes and*
 4 *deliver margins within that 4% to 6% contribution margin range that*
 5 *we've guided to.* Ultimately, the proof of our ability to do that is in our results. I just want to mention again, Q4 will mark our 20th consecutive quarter of positive [contribution margin].

6 So that's housing and – so the housing and forecasting question in total. And
 7 the part two of your question was around contribution margins, and how
 8 they may fluctuate with changes in HPA. *Important is that our model really*
 9 *works in upmarkets, it's going to work in flat markets, it's going to work*
 10 *in downmarkets. We've* talked about this before. But we are a market maker.
 11 Like define that, that means we provided putting in the customers, we're
 12 pricing a certainty and we're taking a spread. We're getting paid for that.
 13 And we're managing that our business to that 46% range I just indicated if
 14 HPA were to go down, we would look to fluctuate increase our spreads to
 15 manage to that target margin range. So, I would not marry HPA trend and
 16 contribution margin trends together. We're driving for consistency within
 17 that range of outcomes.

18 (Emphasis added.)

19 222. Defendant Wheeler also spoke about Zillow's plight and assured investors
 20 of Opendoor's accurate pricing algorithm, stating the following, in relevant part:

21 One additional note on unit margins given the news of the last few weeks.
 22 We understand the importance of one, forecasting and two, managing
 23 seasonal and macro market changes. We have prioritized our investments
 24 and our pricing capabilities across acquisition valuation, forecasting and
 25 resell systems since our inception. These investments pair with a strong risk
 26 management DNA that's embedded in our pricing or operations, and our
 27 finance teams.

28 Our philosophy for growth has always been and will continue to be anchored
 in disciplined unit economics. I'd note that Q4 of 2021 will mark our 20th
 consecutive quarter of positive contribution margins.

1 **The Truth Begins to Emerge While False and Misleading Statements Continue**

2 ***February 24, 2022 Form 10-K***

3 223. On February 24, 2022, the truth began to emerge when the Company filed
4 its annual report for the 2021 Fiscal Year on Form 10-K with the SEC (the “2021 10-K”).
5 The 2021 10-K was signed by Defendants Wu, Wheeler, Bain, Herman, Keffer, Solomon,
6 Kilar, and Jaffe and contained SOX certifications, signed by Defendants Wu and Wheeler,
7 attesting to the accuracy of the financial statements contained in the 2021 10-K, the
8 disclosure of any material changes to the Company’s internal controls, and the disclosure
9 of any fraud committed by the Company, its officers, or its directors.
10

11 224. The 2021 10-K stated that Opendoor’s contribution margin for the fourth
12 quarter of 2021 was 4%, constituting a massive drop from the 12.6% contribution margin
13 from the fourth quarter of 2020. The 2021 10-K also stated that “[o]ur ability to price
14 homes competitively is fundamental to our business model.”
15

16 225. On this news, Opendoor’s stock price fell \$2.54, or 23.13%, from a closing
17 price of \$10.98 on February 24, 2022 to a closing price of \$8.44 on February 25, 2022. A
18 February 25, 2022 article by *The Real Deal* stated that “[t]he selloff was widely attributed
19 to a drop in Opendoor’s contribution margin, a key profitability metric that factors in the
20 costs of carrying and selling home inventory.”
21

22 ***March 4, 2022 Wedbush Real Estate Technology Conference***

23 226. On March 4, 2022, Defendant Wheeler represented Opendoor at the
24 Wedbush Real Estate Technology Conference. During the conference, Defendant Wheeler
25 fielded questions regarding Opendoor’s AI algorithm and the Company’s contribution
26
27
28

1 margins. The conference's moderator, Ygal Arounian, asked Defendant Wheeler the
2 following question:

3 So going from 4Q to 1Q that the guide implies better our margins in 1Q. So,
4 what's the bridge to get from where we were – see improvements in 1Q?
5 And then, how do we think about the sustainability of your margins moving
6 forward, when you've given the guideposts of that kind of 4% to 6%
7 contribution margin, but maybe it's something that often comes up as how
8 to think about that in a flat or declining HPA environment angle. Saw a
couple quarters of flat HPA, it seems like it's sticking back up here again a
little bit, but what about in a declining environment as well?

9 Defendant Wheeler responded by stating the following:

10 So, our Q1 guide as you mentioned, it does imply a sequential increase in
11 contribution margins to around 5%, and as we indicated on the call and we
12 are at a point where walking into Q1 in a real position of strength, very
13 healthy inventories we indicated on our call. We right size our operational
14 capacity and we're seeing strong demand for homes. So we feel good about
our setup for Q1.

15 More broadly, you're [sic] bigger question about how do you manage
16 margins over time relative to different HPA environments. ***Our business
17 model is really designed to ensure that we can meet our annual margin
18 target at 4% to 6% contribution margin, regardless of the home price
19 environment we're operating in, and the way we do that is just how we
20 price our homes.*** We are earning a return for providing liquidity and
21 delivering a superior experience with certainty, and that return of the spread
22 we need to earn is incorporated into every offer price that spray gets
23 dynamically adjusted for every single home and it reflects the level of
certainty we have for each home offer, certainly for us can it be impacted
by factors like, what's the macro? What is the home price environment
we're selling into? What's the rate of resale? As well as, a myriad of specific
home conditions, age of digital home, death of (inaudible), a number of
things.

24
25 If the level of certainty we have is lower, we are going to be more
26 conservative on our offer price, and obviously the inverse can hold too. If
27 we have a high degree of confidence in the offer price, we can be at the
28 higher end of the range, when we submit an offer to the customer. ***But it's
really, this ability to dynamically price homes in response to both micro
and macro factors that allows us to manage first of all, within that 4% to***

1 ***6%, annual margin range, and regardless of the home cycle we're***
2 ***operating in that's really important part of our business model.***

3 (Emphasis added.)

4 227. Moderator Ygal Arounian then asked Defendant Wheeler a follow-up
5 question, stating “maybe you could just help share with investors a little bit more about
6 the pricing algorithm, the model, why you’ve been successful there.” Defendant Wheeler
7 responded by stating:

9 I can confirm for you that [] for us pricing is absolutely core to what we do.
10 It is something that Opendoor’s has been investing in religiously from day
11 one as a core capability in eight years of investment and that's not going to
12 abate. . . [W]e’re like working on how do we accelerate our feedback loops
13 all the time, because . . . being good at pricing is being dynamic about it,
14 like we always want to be able to react every day to changes in macro and
15 micro condition, and that responsiveness is critical to having quality pricing
16 and certainly how do we manage our margins especially in periods of
17 volatility.

18 ***March 8, 2022 Morgan Stanley Technology, Media and Telecom Conference***

19 228. On March 8, 2022, Defendant Wu attended the Morgan Stanley Technology,
20 Media and Telecom Conference on behalf of Opendoor. During the conference, Defendant
21 Wu fielded questions regarding Opendoor’s ability to maintain its contribution margins
22 during turbulent macroeconomic conditions in the housing market. One of the analysts
23 asked Defendant Wu the following question:

24 One of the other common discussions is around just the macro housing
25 market. Housing market has been somewhat white hot for the last, let’s call
26 it, 12 months. Talk to us about how you think about philosophically,
27 investing for growth as the housing market slows in the next couple of years
28 as well as keeping safeguards in place to minimize balance sheet risk and
29 have the- right checks and balances in place.

30 Defendant Wu responded by stating the following:

1 Yes. It's [not] . . . something that falls straight off. And so I would say a
2 couple of things about risk. Obviously, this is something we study very
3 closely and something we're very good at. There's four key points I want to
4 make. One is that our homes are liquid listed assets, which is very different
5 than a homebuilder or a REIT. And we hold homes for about 100 days, of
6 which 50 days of that is under resale contract. That means we have a buyer,
7 a deposit and a contract in place, right. So 50 days of that is on a resale
8 contract. The other half is what you might call a listing exposure, right. And
9 the second thing is that if you study the worst U.S. housing recession in
10 history, which is the GFC or subprime crisis, the market moved much slower
11 than people perceive. And so nationwide in the worst part of the recession,
12 the prices moved a negative 2.8%. And obviously, our exposure is 50 days,
13 but that's well within our margin of error vis-a-vis our contribution margin
14 of 4% to 6%. ***And so if you run the business model through the worst
15 recession in U.S. history, we would still have positive contribution margin.***

16 The third piece of that – that's assuming we don't know that there's a
17 recession. So the third piece of that we've invested heavily in the data
18 collection here. So we're tracking in real-time demand signals, both of our
19 homes, visits, as well as market homes, clearance rates and what's
20 happening in market, mortgage applications, all of the demand signals, then
21 the form of pricing. So there's never a disconnect between what we view
22 with supply side pricing and demand side. And so we're tracking the data
23 very closely, and we're updating prices in real time. And then the fourth is
24 really the debt structure. We have \$11 billion of borrowing capacity,
25 committed nonrecourse. If there's a dislocation, this gives us a tremendous
26 amount of dry powder to actually capitalize on a dislocation.

27 (Emphasis added.)

28 229. Later during the conference, an analyst, concerned whether Opendoor could
keep positive contribution margins in a turbulent market, asked Defendant Wu the
following question:

Thanks. Eric, [] relative to a lot of stocks in the market, the stocks
underperformed a lot despite really positive revisions to revenue. You guys
have been beating your numbers on revenue and gross margins. And what I
hear most often a skepticism about the model itself. And I wanted to just
kind of throw three [bear] cases [at] you in here, to get your response. The
first is that . . . home price appreciation is the reason or kind of the necessary
condition for you to have the types of gross margins that you did and that is

1 home price appreciation plateaued in the back half [of 2021]. We saw that
2 with lower contribution margin in the fourth quarter [of 2021]. That's one.
3 The second is that the business, it's a good business at small scale, but it just
4 can't scale to the volumes that you guys have talked about over time. So
5 Zillow started to grow big and they kind of got out of control and they're
6 like, yes, let's get out of this. The other guys that are doing, iBuying are
7 doing it at much smaller size. So the question is, can you guys do, can you
8 scale the 50,000 homes or 75,000 homes or 100,000. Is that possible? And
9 the third is that the adjusted gross profit that you report and adjusted
10 EBITDA that you report isn't a really good representation of the economic
11 value that you're creating and that, in particular, there's financing costs, you
12 have cost of debt and mezzanine financing. And so whatever adjusted gross
13 margin you're showing us or contribution margin, that's not really durable
14 economic value. And I guess the question there is, do you have the ability
15 to finance it and kind of generate working capital to create sustainable
16 economics? Those are three.

17 Defendant Wu responded to the analyst's question by stating the following, in
18 relevant part:

19 Yes, yes, what I would say is that the whole pricing function is to price the
20 home with as much precision as possible given the risk in the system. And
21 so we've already demonstrated that we can operate in a flat market. The
22 company didn't benefit from 7% quarter-on-quarter appreciation when we
23 started the company. And so I would say that I would point at the results
24 over the past seven years in a less hot market. The other bear case literally
25 two years ago was that we can operate in a hot market. And so now that
26 we've demonstrated that we can actually make more margin in a hot market,
27 there's more demand for the product, then there are many bear cases, can
28 you operate in a declining HPA market. We have empirical evidence that,
obviously, not all zip codes, not all cities, not all states have all gone up at
the same velocity. So we have good evidence that we can operate in
declining market. And outside of like inducing a recession, I can't give you
more confidence outside of that. What I can say is that, again, if you apply
the business to the subprime crisis and do the analysis, the business actually
is quite healthy. And then the bull case is that demand flock to the site.

230. Also during the conference, an analyst asked Defendant Wu, "How do you
think about the difference in your model versus any of the competitors? And how do you
continue to drive the differentiation for sellers and buyers?" Defendant Wu responded by

1 boasting about Opendoor's "automated" algorithm, stating the following:

2 We have expertise in pricing, both off-line data collection and piping that
3 into our models. We've built the lowest cost platform. We're 18 times more
4 efficient at transacting than a realtor. And that's because we centralized,
5 we've automated almost every step we possibly could and really invested
6 heavily behind the scenes in that platform.

7 ***April 8, 2022 Proxy Statement***

8 231. On April 8, 2022, the Company filed its Schedule 14A (the "2022 Proxy
9 Statement") with the SEC. Defendants Wu, Bain, Herman, Jaffe, Keffer, Kilar, and
10 Solomon, solicited the 2022 Proxy Statement filed pursuant to Section 14(a) of the
11 Exchange Act, which contained material misstatements and omissions.

12 232. The 2022 Proxy Statement called for Company shareholders, *inter alia*, to:
13 (1) elect Defendants Bain and Keffer to the Board; (2) ratify Deloitte & Touche LLP as
14 the Company's independent auditor for 2022 Fiscal Year; and (3) hold an advisory vote
15 on executive compensation.
16

17 233. Regarding the Company's Code of Conduct, the 2022 Proxy Statement
18 stated, in relevant part:
19

20 The Board has adopted a written code of business conduct and ethics (the
21 "Code of Conduct"), which applies to all of our employees, officers and
22 directors. Our Code of Conduct is available in the "Corporate Governance"
23 section of our website at investor.opendoor.com. In addition, we intend to
24 post on our website all disclosures that are required by law or the Nasdaq
25 listing rules concerning any amendments to, or waivers from, any provision
26 of our Code of Conduct.

27 234. Regarding the Board's "Role in Risk Oversight," the 2022 Proxy Statement
28 provided, in relevant part:

The Board recognizes that the achievement of our strategic and commercial

1 objectives involves taking risks and that those risks may evolve over time.
2 The Board has oversight responsibility for Opendoor's risk management
3 function, which is designed to identify, assess and monitor fundamental
4 financial and business risks across the Company's operations and consider
5 ways to address and mitigate those risks. Consistent with this approach, one
6 of the Board's primary responsibilities includes reviewing assessments of,
7 and advising management with respect to, significant risks and issues facing
8 the Company.

9 235. Defendants Wu, Bain, Herman, Jaffe, Keffer, Kilar, and Solomon caused
10 the 2022 Proxy Statement to be false and misleading by failing to disclose, *inter alia*,
11 that: (1) Legacy Opendoor did not have a fully automated AI-powered algorithm; (2) as
12 a result, Legacy Opendoor relied on human judgment to assess pricing trends and was,
13 therefore, not as reliable or as high-quality of an operation as Defendants represented; (3)
14 due to the foregoing, the post-Merger Company was susceptible to changing market
15 conditions just like its main competitor, Zillow; (4) the Company engaged in the
16 Overpayment Misconduct; (5) Legacy Opendoor (and following the Merger, the
17 Company) engaged in fraudulent business practices including charging customers for
18 fake repairs to bolster profits; (6) Opendoor's contribution margins were susceptible to
19 falling into the negatives; and (7) in light of the foregoing, Opendoor's financial
20 projections were impossible to attain and patently unrealistic. As a result of the foregoing,
21 the Company's public statements were materially false and misleading at all relevant
22 times.
23

24 236. The 2022 Proxy Statement was also false and misleading because, despite
25 assertions to the contrary, the Company's Code of Conduct was not followed, as the
26 Individual Defendants violated the Code of Conduct, including by allowing false and
27
28

1 misleading statements to be issued to the investing public. The 2022 Proxy Statement was
2 also false and misleading because, despite assertions to the contrary, the Individual
3 Defendants disregarded their role in risk oversight.

4
5 237. As a result of Defendants Wu, Bain, Herman, Jaffe, Keffer, Kilar, and
6 Solomon causing the 2022 Proxy Statement to be false and misleading, Company
7 shareholders voted, *inter alia*, to: (1) reelect Defendants Bain and Keffer to the Board,
8 allowing them to continue to make false and misleading statements; (2) approve named
9 executive officer compensation on an advisory, non-binding basis; and (3) ratify Deloitte
10 & Touche LLP as the Company's independent registered public accounting firm for the
11 2022 Fiscal Year.
12

13
14 ***August 1, 2022 Press Release***

15 238. On August 1, 2022, Opendoor issued a press release that refuted the FTC's
16 announcement of a settlement in their investigation into the Company that was released
17 earlier that same day. The press release stated that Opendoor "strongly disagree[s]" with
18 the FTC's conclusions, and claimed that the misconduct occurred between 2017 to 2019,
19 stating the following:
20

21 While we strongly disagree with the FTC's allegations, our decision to settle
22 with the Commission will allow us to resolve the matter and focus on
23 helping consumers buy, sell and move with simplicity, certainty and speed.

24 Importantly, the allegations raised by the FTC are related to activity that
25 occurred between 2017 and 2019 and target marketing messages the
26 company modified years ago. We are pleased to put this matter behind us
27 and look forward to continuing to provide consumers with a modern real
estate experience.

28 239. With these false and misleading statements, the Individual Defendants led

1 investors to believe that the misconduct alleged by the FTC was confined to 2017 through
2 2019. The very next day, on August 2, 2022, Opendoor's stock rose 1.25%, from a closing
3 price of \$4.79 per share on August 1, 2022 to close at a price of \$24.85 per share on August
4 2, 2022. However, this was far from the truth, as Opendoor continued the misconduct
5 throughout the Relevant Period.
6

7 ***August 4, 2022 Earnings Call***

8 240. On August 4, 2022, Opendoor held an earnings call to discuss the
9 Company's second quarter of 2022 financial performance with analysts and investors.
10 During the call, Defendant Wheeler told investors that Opendoor's AI algorithm could
11 adequately handle the turbulent housing market, stating that, "our systems are doing
12 exactly what they're designed to do, which is responding very, very quickly, adjusting
13 prices to market within recent spreads and new acquisitions."
14
15

16 241. The Individual Defendants made and/or caused the Company to make to the
17 investing public a series of materially false and misleading statements regarding the
18 business, operations, and prospects of the Company and/or Legacy Opendoor.
19 Specifically, the statements in ¶¶ 203-212, 220-222, 226-230, 238, and 240 improperly
20 failed to disclose, *inter alia*, that: (1) Legacy Opendoor did not have a fully automated AI-
21 powered algorithm; (2) as a result, Legacy Opendoor relied on human judgment to assess
22 pricing trends and was, therefore, not as reliable or as high-quality of an operation as
23 Defendants represented; (3) due to the foregoing, the post-Merger Company was
24 susceptible to changing market conditions just like its main competitor, Zillow; (4) the
25 Company engaged in the Overpayment Misconduct; (5) Legacy Opendoor (and following
26
27
28

1 the Merger, the Company) engaged in fraudulent business practices including charging
2 customers for fake repairs to bolster profits; (6) Opendoor's contribution margins were
3 susceptible to falling into the negatives; and (7) in light of the foregoing, Opendoor's
4 financial projections were impossible to attain and patently unrealistic. As a result of the
5 foregoing, the Company's public statements were materially false and misleading at all
6 relevant times.
7

8 **The Truth Fully Emerges**

9
10 242. On September 19, 2022, Bloomberg published an article revealing that
11 Opendoor lost money on forty-two percent of its transactions in August 2022, as measured
12 by the prices the Company bought and sold homes. The Bloomberg article stated the
13 following:
14

15 [Opendoor], which sells thousands of homes in a typical month, lost money
16 on 42% of its transactions in August, according to research from YipitData.
17 Opendoor's performance — as measured by the prices at which it bought
18 and sold properties — was even worse in key markets such as Los Angeles,
19 where the company lost money on 55% of sales, and Phoenix, where the
20 share was 76%.

21 The losses, which don't include fees charged to customers or expenses
22 incurred in renovating and marketing homes, have been looming since the
23 housing market turned suddenly in recent months.

24 * * *

25 The company's rocky summer is reminiscent of the pricing problems that
26 doomed Zillow Group Inc.'s iBuying business last year, according to a
27 research note from Mike DelPrete, a scholar-in-residence at the University
28 of Colorado Boulder. That doesn't mean Opendoor is going to shut down
the business, but it demonstrates the depth of the losses — and September
is likely to be even worse than August, DelPrete's analysis shows.
Opendoor's metrics are in the danger zone," DelPrete said in an interview.
"They are very close to where Zillow was in its worst moments."

1 The iBuying model relies on acquiring homes, making light repairs and
 2 reselling the properties — often within a few months of the initial purchase.
 3 When home prices were skyrocketing earlier in the year, Opendoor banked
 4 easy profits. Then dwindling affordability and mortgage rates soaring
 5 toward 6% this spring finally pushed would-be buyers to the sidelines.
 6 By June, median home prices had begun to decline in some areas, especially
 the Sun Belt markets that had been frothiest in the pandemic boom days.
 The shift caught Opendoor by surprise, leaving it to offload thousands of
 properties it had agreed to purchase when prices were rising.

7 * * *

8 The shares slid 4.7% to \$3.87 at 3:28 p.m. New York time Monday. They
 9 were down 72% this year through the close on Sept. 16.

10 243. On this news, the Company's share price dropped \$0.32, from a closing
 11 price of \$3.88 per share on September 19, 2022 to close at a price of \$3.56 per share on
 12 September 20, 2022. The Company's share price continued to fall the next trading day,
 13 dropping another \$0.31, from a closing price of \$3.56 per share on September 20, 2022 to
 14 close at a price of \$3.25 per share on September 21, 2022.

15
 16 ***October 1, 2022 The Motley Fool Article***

17 244. On October 1, 2022, *The Motley Fool* published an article that stated, "given
 18 the recent Bloomberg coverage, investors should ask whether Opendoor will suffer a fate
 19 similar to (or worse than) Zillow's iBuying business or if there is hope for long-term
 20 success." The article further stated that "[r]apidly decreasing home prices mean Opendoor
 21 is likely struggling to sell homes fast enough to offset the decline in value between the
 22 time they buy a house and resell it. ***Investors will find out more when the company***
 23 ***reports third-quarter earnings.***" (Emphasis added.)

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 27 ***November 3, 2022 Form 10-Q and November 23, 2022 Seeking Alpha Article***

28 245. The truth fully emerged on November 3, 2022 when Opendoor filed a Form

1 10-Q with the SEC for the third quarter ended September 30, 2022 (the “3Q22 10-Q”).
2 The 3Q22 10-Q revealed that the Company’s contribution margin had slid into the
3 negatives for the third quarter of 2022, bottoming out at -0.7%, which was significantly
4 below the 4% to 6% contribution margin Opendoor represented to investors it would have,
5 and even further below Opendoor’s 7.5% contribution margin from the third quarter of
6 2021.
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8 246. On this news, the Company’s share price dropped \$0.32, from a close of
9 \$2.34 per share on November 3, 2022 to a close of \$2.02 per share on November 4, 2022.
10 The Company’s share price continued to fall the next trading day, dropping \$0.29 from a
11 close of \$2.02 per share on November 4, 2022, to a close of \$1.74 per share on November
12 7, 2022.
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15 247. On November 23, 2022, *Seeking Alpha* published an article titled,
16 “Opendoor Must Adapt Its Business Model To Improve Flexibility – Or Continue Value
17 Freefall.” The article reported that the Company’s AI algorithm was not capable of quickly
18 responding to evolving macroeconomic changes in the housing market and suggested that
19 issues with the algorithm were more serious than just processing changes in interest rates.
20 In relevant part, the article stated the following:
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23 Of the 3 iBuying platforms that remain in operation, Opendoor recorded the
24 largest losses, despite owning the largest market share. Profit margins tell a
25 similar story, as all three of the remaining iBuyers struggle to achieve
26 profitability even before accounting for any expenses besides COGS.

26 ***

27 While these declines may be largely attributed to elevated inflation levels
28 and spikes in interest rates (discussed further in next section), the fact that

1 these macroeconomic changes can wreak such havoc on the profitability of
2 this business model illustrates the inflexibility of these businesses to respond
3 to changing circumstances and reveals concerning underlying problems that
4 perhaps go deeper than interest rates. Additionally, while Redfin has other
5 aspects of their business which provide a more diverse revenue stream,
6 Opendoor and Offerpad do not have other sources of revenue that can help
7 sustain the business in times of trouble.

8 **DAMAGES TO OPENDOOR**

9 248. As a direct and proximate result of the Individual Defendants' conduct,
10 Opendoor will lose and expend many millions of dollars.

11 249. Such losses include overpayment made by the Company in consideration
12 of the Merger.

13 250. Such losses include compensation paid to Defendants pursuant to the
14 Incentive Plan.

15 251. Such expenditures include, but are not limited to, legal fees, costs, and any
16 payments for resolution of or to satisfy a judgment associated with the Securities Class
17 Action, and amounts paid to outside lawyers, accountants, and investigators in connection
18 thereto.

19 252. Such expenditures also include, but are not limited to, fees, costs, and any
20 payments for resolution of or to satisfy judgments associated with any other lawsuits filed
21 against the Company or the Individual Defendants based on the misconduct alleged
22 herein, and amounts paid to outside lawyers, accountants, and investigators in connection
23 thereto.

24 253. Such expenditures also include, but are not limited to, the Company's \$62
25 million settlement with the FTC, and amounts paid to outside lawyers, accountants, and
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1 investigators in connection thereto, and losses of revenues caused by customers' loss of
2 trust in the Company's business and products.

3 254. Such expenditures will also include costs incurred in any internal
4 investigations pertaining to violations of law, costs incurred in defending any
5 investigations or legal actions taken against the Company due to its violations of law, and
6 payments of any fines or settlement amounts associated with the Company's violations.
7

8 255. As a direct and proximate result of the Individual Defendants' conduct,
9 Opendoor has also suffered and will continue to suffer a loss of reputation and goodwill,
10 and a "liar's discount" that will plague the Company's stock in the future due to the
11 Company's and their misrepresentations.
12

13 **DERIVATIVE ALLEGATIONS**

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15 256. Plaintiff brings this action derivatively and for the benefit of Opendoor to
16 redress injuries suffered, and to be suffered, as a result of the Individual Defendants'
17 violations of Section 14(a) of the Exchange Act.
18

19 257. Opendoor is named solely as a nominal party in this action. This is not a
20 collusive action to confer jurisdiction on this Court that it would not otherwise have.
21

22 258. Plaintiff is, and at all relevant times has been, an Opendoor shareholder.
23 Plaintiff will adequately and fairly represent the interests of Opendoor in enforcing and
24 prosecuting its rights, and, to that end, has retained competent counsel, experienced in
25 derivative litigation, to enforce and prosecute this action.
26

27 **DEMAND FUTILITY ALLEGATIONS**

28 259. Plaintiff incorporates by reference and re-alleges each and every allegation

1 stated above as if fully set forth herein.

2 260. A pre-suit demand on the Board of Opendoor is futile and, therefore,
3 excused. At the time of filing of this action, the Board consists of the following nine
4 Individuals: Defendants Wu, Wheeler, Keffer, Solomon, Kilar, Jaffe, Herman, Bain, and
5 Rice (the “Director-Defendants”). Plaintiff needs only to allege demand futility as to five
6 of the nine Directors who are on the Board at the time this action is commenced.
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8 261. Demand is excused as to all of the Director-Defendants because each one of
9 them faces, individually and collectively, a substantial likelihood of liability as a result of
10 the schemes they engaged in knowingly or recklessly to cause the Company to engage in
11 the Overpayment Misconduct and to make and/or cause the Company to make false and
12 misleading statements and omissions of material fact, all of which renders the Director-
13 Defendants unable to impartially investigate the charges and decide whether to pursue
14 action against themselves and the other perpetrators of the schemes.
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16 262. Demand is also excused as to the Director-Defendants because pursuant to
17 the Merger Proxy Statement, shareholders were asked to approve their future
18 compensation through approving the Incentive Plan, which reserved shares of the
19 Company’s common stock to be used in the future for, among other things, the benefit of
20 the Director-Defendants. These financial incentives have precluded the Director-
21 Defendants from acting in the best interests of the shareholders, as they have failed to
22 correct the false and misleading statements and omissions contained in the Merger Proxy
23 Statement, the solicitation of which they materially benefitted from since it resulted in
24 their election as Company directors and shareholder approval of the Incentive Plan.
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1 263. To date, Defendants Keffer, Bain, Jaffe, Kilar, Herman, Solomon, and Rice
2 have received material personal benefits under the Incentive Plan as a result of the
3 Director-Defendants' solicitation of the false and misleading Merger Proxy Statement
4 which called for shareholder approval of the Incentive Plan. Shareholders would not have
5 approved the Incentive Plan had they known the true state of affairs at the Company or at
6 Legacy Opendoor. As a result of shareholder approval of the Incentive Plan, Defendants
7 Keffer, Bain, Jaffe, Kilar, Herman, Rice, and Solomon each received \$206,622 worth of
8 stock awards during the 2021 Fiscal Year and \$163,986 worth of stock awards during
9 2022 Fiscal Year from the Company pursuant to the Incentive Plan; they will receive stock
10 awards while they remain as directors. As a result, Defendants Keffer, Bain, Jaffe, Kilar,
11 Herman, Rice, and Solomon are beholden to the SCH Defendants (who solicited the
12 Merger Proxy Statement), and the SCH Defendants (currently sitting on the Board) are
13 beholden to each other, and, thus, cannot be presumed to be disinterested in taking action
14 to redress the misconduct alleged herein. As such, demand upon Defendants Keffer, Bain,
15 Jaffe, Kilar, Herman, Rice, and Solomon is futile and, therefore, excused.

20 264. Additional reasons that demand on Defendant Wu is futile follow.
21 Defendant Wu co-founded Legacy Opendoor in 2014. He served as Legacy Opendoor's
22 CEO and as a member of its board from Legacy Opendoor's founding until the Merger.
23 He then served as Opendoor's CEO and Chairman of the Board from the Merger until
24 December 1, 2022. He now serves as the Company's President of Marketplace and as a
25 director. As the Company's CEO throughout the Relevant Period, Defendant Wu was
26 ultimately responsible for all of the false and misleading statements and omissions that
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1 were made by or on behalf of the Company during the Relevant Period, including those
2 which he signed in the Registration Statement, the Merger Proxy Statement, and the
3 Second Registration Statement. He also solicited the 2021 Proxy Statement and 2022
4 Proxy Statement, both of which contained false and misleading statements and contributed
5 to the re-election of Defendants Herman, Jaffe, Solomon, Bain, and Keffer, which allowed
6 them to continue making false and misleading statements. Thus, as the Company admits,
7 he is a non-independent director. The Company provides Defendant Wu with his principal
8 occupation for which he receives handsome compensation including over \$370 million
9 during the 2020 Fiscal Year following the Merger. As the Company's former highest
10 officer and co-founder, Defendant Wu conducted little, if any, oversight of the scheme to
11 cause the Company to make false and misleading statements, consciously disregarded his
12 duties to monitor internal controls over reporting and engagement in the scheme, and
13 consciously disregarded his duties to protect corporate assets. Moreover, Defendant Wu
14 is a defendant in the Securities Class Action. Additionally, Defendant Wu engaged in a
15 wealth of insider trading throughout the Relevant Period, selling over 5.3 million shares
16 for immense personal proceeds totaling approximately \$112 million. For these reasons,
17 Defendant Wu faces a substantial likelihood of liability, is not independent or
18 disinterested, and thus demand upon him his futile and, therefore, excused.

24 265. Additional reasons that demand on Defendant Wheeler is futile follow.
25 Defendant Wheeler has served as Opendoor's CEO since December 2022 and as a
26 Company director since September 2020. From September 2020 until December 2022,
27 she served as the Company's CFO. Prior to this, Defendant Wheeler served as a director
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1 of Legacy Opendoor from October 2019 until the Merger. Defendant Wheeler has
2 received and continues to receive significant compensation for her role as a director as
3 described above, including over \$50 million during the 2020 Fiscal Year following the
4 Merger. As a trusted Company director and as the Company's highest officer, she
5 conducted little, if any, oversight of the scheme to cause the Company to make false and
6 misleading statements, consciously disregarded her duties to monitor such controls over
7 reporting and engagement in the scheme, and consciously disregarded her duties to protect
8 corporate assets. She also solicited the 2021 Proxy Statement and 2022 Proxy Statement,
9 both of which contained false and misleading statements and contributed to the re-election
10 of Defendants Herman, Jaffe, Solomon, Bain, and Keffer, which allowed them to continue
11 making false and misleading statements. Moreover, Defendant Wheeler is a defendant in
12 the Securities Class Action. For these reasons, Defendant Wheeler faces a substantial
13 likelihood of liability, is not independent or disinterested, and thus demand upon her is
14 futile and, therefore, excused.

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19 266. Additional reasons that demand on Defendant Bain is futile follow.
20 Defendant Bain has served as a Company director since the Merger. He also serves as a
21 member of the Audit Committee and the Compensation Committee. Prior to this,
22 Defendant Bain served as an SCH director from October 2019 until the Merger. Defendant
23 Bain has received and continues to receive compensation for his role as a director as
24 described above, including \$282,896 for the 2021 Fiscal Year. As a trusted Company
25 director, he conducted little, if any, oversight of the scheme to cause the Company to make
26 false and misleading statements, consciously disregarded his duties to monitor such
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1 controls over reporting and engagement in the scheme, and consciously disregarded his
2 duties to protect corporate assets. He also solicited the Merger Proxy Statement, the 2021
3 Proxy Statement, and 2022 Proxy Statement, all of which contained false and misleading
4 statements and contributed to the election and re-elections of Defendants Herman, Jaffe,
5 Solomon, Keffer, and Defendant Bain himself to the Company's Board, which allowed
6 them to continue making false and misleading statements. For these reasons, Defendant
7 Bain faces a substantial likelihood of liability, is not independent or disinterested, and thus
8 demand upon him is futile and, therefore, excused.
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11 267. Additional reasons that demand on Defendant Herman is futile follow.
12 Defendant Herman has served as a Company director since the Merger. She also serves as
13 the Chair of the Audit Committee. Prior to this, Defendant Herman served as an SCH
14 director from October 2019 until the Merger. Defendant Herman has received and
15 continues to receive compensation for her role as a director as described above, including
16 \$636,877 for the 2020 and 2021 Fiscal Years. As a trusted Company director, she
17 conducted little, if any, oversight of the scheme to cause the Company to make false and
18 misleading statements, consciously disregarded her duties to monitor such controls over
19 reporting and engagement in the scheme, and consciously disregarded her duties to protect
20 corporate assets. She also solicited the Merger Proxy Statement, the 2021 Proxy
21 Statement, and 2022 Proxy Statement, all of which contained false and misleading
22 statements and contributed to the election and re-elections of Defendants Bain, Jaffe,
23 Solomon, Keffer, and Defendant Herman herself to the Company's Board, which allowed
24 them to continue making false and misleading statements. For these reasons, Defendant
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1 Herman faces a substantial likelihood of liability, is not independent or disinterested, and
2 thus demand upon her is futile and, therefore, excused.

3 268. Additional reasons that demand on Defendant Jaffe is futile follow.
4 Defendant Jaffe has served as a Company director since the Merger. He also serves as a
5 member of the Nominating and Corporate Governance Committee. Prior to this,
6 Defendant Jaffe served as a Legacy Opendoor director from June 2018 until the Merger.
7 Defendant Jaffe has received and continues to receive compensation for his role as a
8 director as described above, including \$263,726 for the 2021 Fiscal Year. As a trusted
9 Company director, he conducted little, if any, oversight of the scheme to cause the
10 Company to make false and misleading statements, consciously disregarded his duties to
11 monitor such controls over reporting and engagement in the scheme, and consciously
12 disregarded his duties to protect corporate assets. He also solicited the Merger Proxy
13 Statement, the 2021 Proxy Statement, and 2022 Proxy Statement, all of which contained
14 false and misleading statements and contributed to the election and re-elections of
15 Defendants Bain, Herman, Solomon, Keffer, and Defendant Jaffe himself to the
16 Company's Board, which allowed them to continue making false and misleading
17 statements. For these reasons, Defendant Jaffe faces a substantial likelihood of liability, is
18 not independent or disinterested, and thus demand upon him is futile and, therefore,
19 excused.

20 269. Additional reasons that demand on Defendant Keffer is futile follow.
21 Defendant Keffer has served as a Company director since the Merger. He also serves as a
22 member of the Audit Committee. Prior to this, Defendant Keffer served as a Legacy
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1 Opendoor director from October 2015 until the Merger. Defendant Keffer has received
2 and continues to receive compensation for his role as a director as described above,
3 including \$274,421 for the 2021 Fiscal Year. As a trusted Company director, he conducted
4 little, if any, oversight of the scheme to cause the Company to make false and misleading
5 statements, consciously disregarded his duties to monitor such controls over reporting and
6 engagement in the scheme, and consciously disregarded his duties to protect corporate
7 assets. He also solicited the Merger Proxy Statement, the 2021 Proxy Statement, and 2022
8 Proxy Statement, all of which contained false and misleading statements and contributed
9 to the election and re-elections of Defendants Bain, Herman, Solomon, Jaffe, and
10 Defendant Keffer himself to the Company's Board, which allowed them to continue
11 making false and misleading statements. For these reasons, Defendant Keffer faces a
12 substantial likelihood of liability, is not independent or disinterested, and thus demand
13 upon him is futile and, therefore, excused.

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18 270. Additional reasons that demand on Defendant Kilar is futile follow.
19 Defendant Kilar has served as a Company director since the Merger. He also serves as the
20 chair of the Nominating and Corporate Governance Committee. Prior to this, Defendant
21 Kilar served as a Legacy Opendoor director from March 2019 until the Merger. Defendant
22 Kilar has received and continues to receive compensation for his role as a director as
23 described above, including \$274,421 for the 2021 Fiscal Year. As a trusted Company
24 director, he conducted little, if any, oversight of the scheme to cause the Company to make
25 false and misleading statements, consciously disregarded his duties to monitor such
26 controls over reporting and engagement in the scheme, and consciously disregarded his
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1 duties to protect corporate assets. He also solicited the Merger Proxy Statement, the 2021
2 Proxy Statement, and 2022 Proxy Statement, all of which contained false and misleading
3 statements and contributed to the election and re-elections of Defendants Bain, Herman,
4 Solomon, Jaffe, Keffer, and Defendant Kilar himself to the Company's Board, which
5 allowed them to continue making false and misleading statements. For these reasons,
6 Defendant Kilar faces a substantial likelihood of liability, is not independent or
7 disinterested, and thus demand upon him is futile and, therefore, excused.
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10 271. Additional reasons that demand on Defendant Solomon is futile follow.
11 Defendant Solomon has served as a Company director since the Merger. He also serves
12 as the Chair of the Compensation Committee. Prior to this, Defendant Solomon served as
13 a Legacy Opendoor director from February 2015 until the Merger. Defendant Solomon
14 has received and continues to receive compensation for his role as a director as described
15 above, including \$280,077 for the 2021 Fiscal Year. As a trusted Company director, he
16 conducted little, if any, oversight of the scheme to cause the Company to make false and
17 misleading statements, consciously disregarded his duties to monitor such controls over
18 reporting and engagement in the scheme, and consciously disregarded his duties to protect
19 corporate assets. He also solicited the Merger Proxy Statement, the 2021 Proxy Statement,
20 and 2022 Proxy Statement, all of which contained false and misleading statements and
21 contributed to the election and re-elections of Defendants Bain, Herman, Solomon, Jaffe,
22 Keffer, Kilar and Defendant Solomon himself to the Company's Board, which allowed
23 them to continue to make false and misleading statements. For these reasons, Defendant
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1 Solomon faces a substantial likelihood of liability, is not independent or disinterested, and
2 thus demand upon him is futile and, therefore, excused.

3 272. Additional reasons that demand on Defendant Rice is futile follow.
4 Defendant Rice has served as a Company director since the Merger. He also serves as the
5 Company's Lead Independent Director and as a member of the Nominating and Corporate
6 Governance Committee. Prior to this, Defendant Rice served as a Legacy Opendoor
7 director until the Merger, as the Company notes on its website. Defendant Rice has
8 received and continues to receive compensation for his role as a director as described
9 above, including \$627,711 for the 2021 Fiscal Year. As a trusted Company director, he
10 conducted little, if any, oversight of the scheme to cause the Company to make false and
11 misleading statements, consciously disregarded his duties to monitor such controls over
12 reporting and engagement in the scheme, and consciously disregarded his duties to protect
13 corporate assets. He also solicited the 2021 Proxy Statement and 2022 Proxy Statement,
14 both of which contained false and misleading statements and contributed to the election
15 and re-elections of Defendants Bain, Herman, Solomon, Jaffe, Keffer, Kilar and Solomon
16 to the Company's Board, which allowed them to continue to make false and misleading
17 statements. For these reasons, Defendant Rice faces a substantial likelihood of liability, is
18 not independent or disinterested, and thus demand upon him is futile and, therefore,
19 excused.

20 273. Additional reasons that demand on the Board is futile follow.

21 274. Demand would also be futile as a result of various of the Director-
22 Defendants receiving additional material personal benefits as a result of the SCH
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1 Defendants' solicitation of the false and misleading Merger Proxy Statement. For
2 instance, Defendant Wu's compensation rose over 1300x as a result the Merger, rising
3 from total compensation amounts of \$275,000 in 2019 from Legacy Opendoor, to total
4 compensation amounts of more than \$370 million in 2022 from Opendoor. Likewise,
5 Defendant Wheeler received more than \$50.2 million in 2020 from the Company
6 following the closing of the Merger. Moreover, all of the Defendants who served on
7 Opendoor's Board after the Merger, including Defendants Wu, Wheeler, Bain, Herman,
8 Jaffe, Keffer, Kilar, and Solomon, received large grants of Opendoor restricted stock in
9 the weeks following the Merger as a result of the SCH Defendants' solicitation of the
10 false and misleading Merger Proxy Statement, making it unlikely that these Director-
11 Defendants would take action against the SCH Defendants. For these reasons, too,
12 demand on these Director-Defendants would be futile.

16 275. Moreover, Defendants Herman, Keffer, and Bain served as members of the
17 Audit Committee during the Relevant Period. In violation of the Audit Committee Charter,
18 Defendants Herman, Keffer, and Bain failed to adequately exercise their risk management
19 and risk assessment functions and failed to ensure adequate Board oversight of the
20 Company's internal control over financial reporting, disclosure controls and procedures,
21 and Code of Conduct. Thus, Defendants Herman, Keffer, and Bain are not disinterested,
22 and demand is excused as to them.

25 276. In violation of the Code of Conduct, the Director-Defendants conducted
26 little, if any, oversight of the Company's engagement in the Individual Defendants'
27 scheme to cause the Company to issue materially false and misleading statements to the
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1 public, and to facilitate and disguise the Individual Defendants' violations of law,
2 including violations of the Exchange Act. In violation of the Code of Conduct, the
3 Director-Defendants failed to avoid conflicts of interest or the appearance of conflicts of
4 interest; maintain the accuracy of Company records; comply with all applicable laws,
5 rules, and regulations; and properly report violations of the Code of Conduct and
6 applicable laws, rules, and regulations. Thus, the Director-Defendants face a substantial
7 likelihood of liability and demand is futile as to them.
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10 277. Opendoor has been and will continue to be exposed to significant losses due
11 to the wrongdoing complained of herein, yet the Director-Defendants have not filed any
12 lawsuits against the Individual Defendants or others who were responsible for that
13 wrongful conduct to attempt to recover for Opendoor any part of the damages Opendoor
14 suffered and will continue to suffer thereby. Thus, any demand upon the Director-
15 Defendants would be futile.
16

17 278. The Individual Defendants' conduct described herein and summarized
18 above could not have been the product of legitimate business judgment as it was based on
19 bad faith and intentional, reckless, or disloyal misconduct. Thus, none of the Director-
20 Defendants can claim exculpation from their violations of duty pursuant to the Company's
21 charter (to the extent such a provision exists). As a majority of the Director-Defendants
22 face a substantial likelihood of liability, they are self-interested in the transactions
23 challenged herein and are not capable of exercising independent and disinterested
24 judgment about whether to pursue this action on behalf of the shareholders of the
25 Company. Accordingly, demand is excused as being futile.
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1 279. The acts complained of herein constitute violations of the Exchange Act by
2 Opendoor's officers and directors, and these acts are incapable of ratification.

3 280. The Director-Defendants may also be protected against personal liability for
4 their acts of mismanagement alleged herein by directors' and officers' liability insurance
5 if they caused the Company to purchase it for their protection with corporate funds, i.e.,
6 monies belonging to the stockholders of Opendoor. If there is a directors' and officers'
7 liability insurance policy covering the Director-Defendants, it may contain provisions that
8 eliminate coverage for any action brought directly by the Company against the Director-
9 Defendants, known as, *inter alia*, the "insured-versus-insured exclusion." As a result, if
10 the Director-Defendants were to sue themselves or certain of the officers of Opendoor,
11 there would be no directors' and officers' insurance protection. Accordingly, the Director-
12 Defendants cannot be expected to bring such a suit. On the other hand, if the suit is brought
13 derivatively, as this action is brought, such insurance coverage, if such an insurance policy
14 exists, will provide a basis for the Company to effectuate a recovery. Thus, demand on the
15 Director-Defendants is futile and, therefore, excused.

16 281. If there is no directors' and officers' liability insurance, then the Director-
17 Defendants will not cause Opendoor to sue the Individual Defendants named herein, since,
18 if they did, they would face a large uninsured individual liability. Accordingly, demand is
19 futile in that event, as well.

20 282. Thus, for all of the reasons set forth above, all of the Director-Defendants,
21 and, if not all of them, at least five of the Director-Defendants, cannot consider a demand
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1 with disinterestedness and independence. Consequently, a demand upon the Board is
2 excused as futile.

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4 **CLAIM**
5 **Against the Individual Defendants for Violations of Section 14(a) of the Securities**
6 **Exchange Act of 1934**

7 283. Plaintiff incorporates by reference and re-alleges each and every allegation
8 set forth above, as though fully set forth herein.

9 284. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that “[i]t
10 shall be unlawful for any person, by use of the mails or by any means or instrumentality
11 of interstate commerce or of any facility of a national securities exchange or otherwise, in
12 contravention of such rules and regulations as the [SEC] may prescribe as necessary or
13 appropriate in the public interest or for the protection of investors, to solicit or to permit
14 the use of his name to solicit any proxy or consent or authorization in respect of any
15 security (other than an exempted security) registered pursuant to section 12 of this title
16 [15 U.S.C. § 78l].”

17 285. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides
18 that no proxy statement shall contain “any statement which, at the time and in the light of
19 the circumstances under which it is made, is false or misleading with respect to any
20 material fact, or which omits to state any material fact necessary in order to make the
21 statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

22 286. Under the direction and watch of the Individual Defendants, the Merger
23 Proxy Statement, the 2021 Proxy Statement, and the 2022 Proxy Statement failed to
24 disclose that: (1) Legacy Opendoor did not have a fully automated AI-powered algorithm;
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1 (2) as a result, Legacy Opendoor relied on human judgment to assess pricing trends and
2 was, therefore, not as reliable or as high-quality of an operation as Defendants
3 represented; (3) due to the foregoing, the post-Merger Company was susceptible to
4 changing market conditions just like its main competitor, Zillow; (4) the Company
5 engaged in the Overpayment Misconduct; (5) Legacy Opendoor (and following the
6 Merger, the Company) engaged in fraudulent business practices including issuing fake
7 repairs to bolster profits; (6) Opendoor's contribution margins were susceptible to falling
8 into the negatives; (7) in light of the foregoing, Opendoor's financial projections were
9 impossible to attain and patently unrealistic; and (8) Defendants were improperly
10 interested in increasing their future compensation by seeking shareholder approval of the
11 Incentive Plan. As a result of the foregoing, the Company's public statements were
12 materially false and misleading at all relevant times.

16 287. Moreover, the Merger Proxy Statement, the 2021 Proxy Statement, and the
17 2022 Proxy Statement failed to disclose that the Board's oversight and risk mechanisms
18 were not adequate given the aforementioned misconduct and that the Code of Conduct
19 was not complied with. The Merger Proxy Statement, the 2021 Proxy Statement, and the
20 2022 Proxy Statement also failed to disclose that SCH had failed to conduct proper due
21 diligence of Legacy Opendoor's operations leading up to the Merger.

24 288. The Individual Defendants knew or recklessly disregarded that by
25 misrepresenting or failing to disclose the foregoing material facts, the statements
26 contained in the Merger Proxy Statement, the 2021 Proxy Statement, and the 2022 Proxy
27 Statement were materially false and misleading. The misrepresentations and omissions
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1 were material to Plaintiff and Company shareholders in voting on the matters set forth for
2 shareholder determination in the Merger Proxy Statement, the 2021 Proxy Statement, and
3 the 2022 Proxy Statement.

4 289. The misrepresentations and omissions in the Merger Proxy Statement were
5 material to Plaintiff and Company shareholders in voting on the matters set forth for
6 shareholder determination, including, *inter alia*: (1) approval of the Merger; (2) approval
7 of the Organizational Documents Proposals; (3) election of Defendants Wu, Keffer,
8 Solomon, Kilar, Jaffe, and Herman as directors to the post-Merger Company's Board; (4)
9 approval of a proposal for the PIPE financing; (5) approval of a proposal to adopt the
10 Incentive Plan; and (6) approval of the Employee Stock Plan.

11 290. As a result of Plaintiff and shareholders voting to approve the Merger, the
12 overpayment was made by the Company in consideration of the Merger.

13 291. As a result of Plaintiff and shareholders voting to approve the Incentive Plan
14 based on Defendants' false and misleading statements in the Merger Proxy Statement, to
15 date, under the Incentive Plan, Defendants Keffer, Bain, Jaffe, Kilar, Herman, and
16 Solomon have each received from the Company \$206,622 worth of stock awards during
17 the 2021 Fiscal Year and \$163,986 worth of stock awards during 2022 Fiscal Year; they
18 will continue to receive compensation pursuant to the Incentive Plan while they remain as
19 directors.

20 292. The misrepresentations and omissions in the 2021 Proxy Statement were
21 material to Plaintiff and Company shareholders in voting on the matters set forth for
22 shareholder determination therein, including but not limited to: (1) election of Defendants
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1 Herman, Jaffe, and Solomon to the Board; (2) ratification of Deloitte & Touche LLP as
2 the Company's independent auditor for the 2021 Fiscal Year; and (3) the holding of an
3 advisory vote on executive compensation.

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5 293. The misrepresentations and omissions in the 2022 Proxy Statement were
6 material to Plaintiff and Company shareholders in voting on the matters set forth for
7 shareholder determination therein, including but not limited to: (1) election of Defendants
8 Bain and Keffer to the Board; (2) ratification Deloitte & Touche LLP as the Company's
9 independent auditor for 2022 Fiscal Year; and (3) holding an advisory vote on executive
10 compensation.
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12 294. The Company was damaged as a result of the Individual Defendants'
13 material misrepresentations and omissions in the Merger Proxy Statement, 2021 Proxy
14 Statement, and 2022 Proxy Statement.
15

16 295. Plaintiff, on behalf of Opendoor, has no adequate remedy at law.
17

18 **PRAYER FOR RELIEF**

19 FOR THESE REASONS, Plaintiff demands judgment in the Company's favor
20 against all Individual Defendants as follows:

21 (a) Declaring that Plaintiff may maintain this action on behalf of Opendoor,
22 and that Plaintiff is an adequate representative of the Company;
23

24 (b) Determining and awarding to Opendoor the damages sustained by it as a
25 result of the violations set forth above from each of the Individual Defendants, jointly
26 and severally, together with pre-judgment and post-judgment interest thereon;
27

28 (c) Directing Opendoor and the Individual Defendants to take all necessary

1 actions to reform and improve its corporate governance and internal procedures to
2 comply with applicable laws and to protect Opendoor and its shareholders from a repeat
3 of the damaging events described herein. The following actions may be necessary to
4 ensure proper corporate governance policies:
5

6 1. a proposal to strengthen the board's supervision of operations
7 and develop and implement procedures for greater shareholder input into
8 the policies and guidelines of the board;
9

10 2. a provision to permit the shareholders of Opendoor to
11 nominate at least five candidates for election to the board; and

12 3. a proposal to ensure the establishment of effective oversight
13 of compliance with applicable laws, rules, and regulations.
14

15 (e) Awarding Opendoor restitution from Individual Defendants, and each of
16 them;
17

18 (f) Awarding Plaintiff the costs and disbursements of this action, including
19 reasonable attorneys' and experts' fees, costs, and expenses; and

20 (g) Granting such other and further relief as the Court may deem just and
21 proper.
22

23 **JURY TRIAL DEMANDED**

24 Plaintiff hereby demands a trial by jury.
25
26
27
28

1 Dated: October 18, 2023

2 **MCKAY LAW, LLC**

3
4 By: /s/ Michael McKay
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17 **BRONSTEIN, GEWIRTZ &**
18 **GROSSMAN, LLC**

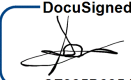
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27 *Counsel for Plaintiff*
28

VERIFICATION

I, Samhita Gera, am a plaintiff in the within action. I have reviewed the allegations made in this Shareholder Derivative Complaint, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15__ day of October, 2023.

DocuSigned by:

CF385B635442498...

Samhita Gera